

EXHIBIT A

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : COMPLETE TRANSCRIPT OF THE JURY TRIAL BEFORE THE HONORABLE ROBERT E. PAYNE UNITED STATES DISTRICT JUDGE, AND A JURY APPEARANCES: Scott L. Robertson, Esquire Michael G. Strapp, Esquire Jennifer A. Albert, Esquire David M. Young, Esquire Goodwin Procter, LLP 901 New York Avenue NW Suite 900 Washington, D.C. 20001 Craig T. Merritt, Esquire Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor, plaintiff is. 11 MR. McDONALD: Yes, Your Honor. Thank you. 12 THE COURT: All right. Good morning, ladies and 13 gentlemen. On behalf of the Court and counsel and the parties, 14 I'd like to thank you for your participation this morning in 15 one of the most important civic duties that citizens of our 16 country have. 17 We are a society which has chosen to rule itself in 18 accord with the rule of law, and we have taken in our 19 Constitution and our laws measures to make sure that we have an 20 effective legal system by which people can resolve their 21 disputes in court rather than in the streets, and if we did not 22 have the service of jurors to make the sacrifices that jurors 23 are called upon to do so, then our system of justice that is 24 administered in accord with our Constitution and our statutes 25 could not exist.</p>
<p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 And so what you are called upon to do is a public 2 duty of the highest order which, of course, all of us know 3 entail sacrifices for you and for your families and for your 4 employers and imposes burdens upon you beyond that of the 5 ordinary responsibilities that you have which are already 6 significant, and all of us know that. 7 This case involves a dispute over patents. There 8 are -- the plaintiff here is ePlus, Incorporated, or Inc., and 9 ePlus, whose lawyers are sitting over here, has some patents 10 that are issued by the United States Patent Office, a process 11 that is sanctioned and approved by the Constitution of the 12 country and the laws of the nation, and the patents all are 13 long-numbered. 14 They have six figures, and, in fact, I expect most of 15 us would like to earn incomes in accord with the size of the 16 numbers of these patents, but they are referred to by three 17 small digits, the last three digits of the patent. I don't 18 know that any of you know anything about these patents, but I 19 want to let you know and understand what these patents are. 20 There's a patent number 6023683 which is called the 21 '683 patent. There's patent number 6055516 or the '516 patent. 22 There's patent number 6505172 or the '172 patent. Sometimes, 23 patents may be referred to, instead of using these short 24 numbers, '516 or '683 as the patents-in-suit. That's just a 25 term that lawyers sometimes use to talk about the patents that</p>

<p style="text-align: right;">229</p> <p>Momyer - Direct 229</p> <p>1 value-added systems. What that really would do is it would</p> <p>2 establish a good business relationship, partnership between</p> <p>3 ourselves and our customers, and in many ways kind of lock that</p> <p>4 customer in to doing business with Fisher.</p> <p>5 We would do things like provide a customized invoice,</p> <p>6 provide for remote order entry capabilities where the customer</p> <p>7 themselves could enter the order, and these kind of things</p> <p>8 would allow the customer to, in many ways, become more</p> <p>9 efficient in their day-to-day operations as well as to reduce</p> <p>10 their costs of operation.</p> <p>11 Q And do you understand one of the objectives then was to</p> <p>12 promote the sale of Fisher product through these value-added</p> <p>13 features you've mentioned?</p> <p>14 A Absolutely.</p> <p>15 Q Generally the goal of any business?</p> <p>16 A That's right.</p> <p>17 Q Now, you mentioned, I think, in one of your value-added</p> <p>18 features that there was this inventory management aspect; do</p> <p>19 you recall?</p> <p>20 A I didn't mention that.</p> <p>21 Q Okay, I'm sorry. Did you have any value-added feature</p> <p>22 that involved inventory management?</p> <p>23 A Yes, that was a value-added -- we did find a good tool to</p> <p>24 allow us to get involved in a good relationship with our</p> <p>25 customers, and what we do -- and we actually did this before we</p>	<p style="text-align: right;">231</p> <p>Momyer - Direct 231</p> <p>1 A Sure. The -- basically the RIMS system would keep track</p> <p>2 of the inventory that was in the stockroom. That inventory</p> <p>3 could be both customer-owned or Fisher-owned and could keep</p> <p>4 track of who pulled the product out, and would also -- keeping</p> <p>5 track of the inventory, also determine if the inventory,</p> <p>6 specific product had to be restocked.</p> <p>7 So there was a component of the system that would allow us</p> <p>8 to, based upon the order point and reorder quantity, would</p> <p>9 actually reorder and transmit orders to Fisher to refill,</p> <p>10 refill the stockroom for the products and how much was needed</p> <p>11 in them.</p> <p>12 Q Did you help develop the RIMS system?</p> <p>13 A Yes, I did.</p> <p>14 Q When did you work on that RIMS system?</p> <p>15 A 1989 would be probably when we started. I think we had</p> <p>16 our first installation around 1981.</p> <p>17 Q Did that RIMS system that you've generally described at a</p> <p>18 high level go through various iterations or versions?</p> <p>19 A Oh, sure. The first version that was put out there really</p> <p>20 handled -- only handled recording of requisitions without</p> <p>21 dealing with the inventory management.</p> <p>22 Q Let me just stop you there and say, approximately how many</p> <p>23 iterations or variations did the system go through?</p> <p>24 A Dozens if not more than that. The Fisher RIMS system was</p> <p>25 in existence from 1991 all the way through until I left in</p>
<p style="text-align: right;">230</p> <p>Momyer - Direct 230</p> <p>1 had a system to manage it.</p> <p>2 We would put inventory, Fisher owned inventory at our</p> <p>3 customers' site to allow them to -- and get those products and</p> <p>4 use those products that are in the inventory for their daily</p> <p>5 use, and that would allow them to very quickly have access to</p> <p>6 inventory and not have to wait a day or so until the ordered</p> <p>7 item would be delivered from a Fisher distribution center.</p> <p>8 Q I'd like to sort of focus, if we could, on how we got to</p> <p>9 the inventions that are the patents-in-suit, the ones in issue</p> <p>10 here, Plaintiff's Exhibit 1, 2, and 3 and what led up to the</p> <p>11 inventors, yourself, as well as the other inventors that are</p> <p>12 identified in the patent solving some of the problems that</p> <p>13 needed to be solved. Are you capable of doing that with me?</p> <p>14 A Sure.</p> <p>15 Q You mentioned this inventory management system where you</p> <p>16 kept actual Fisher inventory at customers' sites. Is that</p> <p>17 Fisher-owned inventory?</p> <p>18 A Yes. We actually -- initially it was Fisher-owned</p> <p>19 inventory, but the system we developed actually would allow us</p> <p>20 to manage the customers' inventory as well.</p> <p>21 Q What was that inventory management system called?</p> <p>22 A RIMS, R-I-M-S.</p> <p>23 Q And what did RIMS stand for, sir?</p> <p>24 A Requisition inventory management system.</p> <p>25 Q Just at a high level, can you tell me what RIMS could do?</p>	<p style="text-align: right;">232</p> <p>Momyer - Direct 232</p> <p>1 2003, and there were many iterations of that, and primarily</p> <p>2 those iterations were based upon some unique requirements the</p> <p>3 customer had or some business initiative that Fisher wanted to</p> <p>4 undertake in the area of inventory control and inventory</p> <p>5 management at a customer's site.</p> <p>6 Q Could you open to Plaintiff's Exhibit Number 10 that's in</p> <p>7 your notebook, and I'd ask you if you could identify that</p> <p>8 document for me.</p> <p>9 A That is a patent for a just-in-time requisition inventory</p> <p>10 management system.</p> <p>11 Q Just-in-time requisition and inventory management system;</p> <p>12 is that right?</p> <p>13 A That's correct.</p> <p>14 Q What does just in time mean in the context of that</p> <p>15 invention?</p> <p>16 A If you think about what we were trying to do, tried to</p> <p>17 explain a little bit when I talked about the invention itself,</p> <p>18 the RIMS system, it is providing product to the customer when</p> <p>19 they need it.</p> <p>20 A very typical scenario would be a chemist who is doing</p> <p>21 some research may need a reagent or a test tube, and it's very</p> <p>22 critical they have it right away, so by putting inventory at</p> <p>23 the customer's site, this would allow them to have inventory</p> <p>24 just in time, just when they need it. It is a value added to</p> <p>25 our customers.</p>

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<p style="text-align: right;">233</p> <p>Momyer - Direct 233</p> <p>1 Q So this just in time has often been referred to as JIT?</p> <p>2 A JIT, yes.</p> <p>3 Q This ability to replenish product quickly, was that</p> <p>4 something desirable on Fisher's part in order to service their</p> <p>5 customers?</p> <p>6 A Absolutely. Once again, it was value both to Fisher as</p> <p>7 well as their customer. As a result, I think it created a good</p> <p>8 relationship, a good business partnership.</p> <p>9 Q On Plaintiff's Exhibit Number 10, this patent involving</p> <p>10 just-in-time requisition and inventory management system, is</p> <p>11 that something that you -- subject matter associated with this</p> <p>12 commercial system you were discussing known as RIMS?</p> <p>13 A Yes.</p> <p>14 Q And I understood you to say that there were multiple</p> <p>15 variations and iterations of RIMS; is that right?</p> <p>16 A That's correct.</p> <p>17 Q Are all those variations described in this patent, this</p> <p>18 '989 patent, Plaintiff's Exhibit Number 10?</p> <p>19 A No.</p> <p>20 Q Let me just go back. I should have done this earlier.</p> <p>21 Are you one of the named inventors on this patent as well?</p> <p>22 A Yes, I am, number two.</p> <p>23 Q And there's also a Mr. James Johnson named on this '989</p> <p>24 patent, Plaintiff's Exhibit Number 10; do you see that?</p> <p>25 A Yes, I do.</p>	<p style="text-align: right;">235</p> <p>Momyer - Direct 235</p> <p>1 the customer facility. They could come directly to the</p> <p>2 customer service rep, or they could pass in the interoffice</p> <p>3 mail a requisition form which would then come to the customer</p> <p>4 service rep that way.</p> <p>5 Q When you say interoffice, we're not talking email or</p> <p>6 something like that?</p> <p>7 A No, piece of paper. Because in many cases what had to</p> <p>8 happen was these requisitions would have to go through a level</p> <p>9 of approval. Any time you would take a requisition, in most</p> <p>10 cases you're going to have to get some sign-off from some</p> <p>11 supervisor along the way saying it's okay to buy this product.</p> <p>12 Q So in utilizing this RIMS system, there are number of</p> <p>13 individuals who may need to be involved in the process</p> <p>14 including the customer who wants to make the purchase, some</p> <p>15 sort of intermediate approval, management, CSR, someone to fill</p> <p>16 the item that's being desired; correct?</p> <p>17 A That's correct. Now, that last step as far as picking the</p> <p>18 product and delivering the product could be the same person.</p> <p>19 Very often, it was with a customer service rep --</p> <p>20 Q Did Fisher charge its customers for this RIMS value-added</p> <p>21 service you described?</p> <p>22 A It wasn't a for-sell product. It was really a tool that</p> <p>23 Fisher used to manage the on-site inventory.</p> <p>24 Q Did you ever try to sell this service to your customers?</p> <p>25 A No. I will tell you it did provide some significant value</p>
<p style="text-align: right;">234</p> <p>Momyer - Direct 234</p> <p>1 Q Do you know just from memory whether or not Mr. Johnson is</p> <p>2 also a named inventor on Plaintiff's Exhibit Number 1, 2, and</p> <p>3 3, the three patents issued in this case?</p> <p>4 A Yes, he is.</p> <p>5 Q I want to focus a little bit briefly on this RIMS system</p> <p>6 and its functionality that you were talking to. You mentioned</p> <p>7 in the prior non-computerized world where someone would have to</p> <p>8 pick up the phone and call in, there was a customer service</p> <p>9 representative or a CSR.</p> <p>10 A That's correct.</p> <p>11 Q Was the CSR required in this RIMS system you are talking</p> <p>12 about that Fisher utilized?</p> <p>13 A Yes, it was. The RIMS system was entirely dependent upon</p> <p>14 an on-site customer service rep to operate.</p> <p>15 Q What was the responsibility of that customer service</p> <p>16 representative or CSR?</p> <p>17 A Twofold. To manage the stockroom, or -- as well as take</p> <p>18 the requisitions that the customers had for the, primarily for</p> <p>19 the inventory that was in the stockroom.</p> <p>20 Q And what happened if one of the customers needed some</p> <p>21 just-in-time inventory with this RIMS system? How would that</p> <p>22 work?</p> <p>23 A The customer would have to contact in some manner the</p> <p>24 on-site customer service rep, and that contact would be</p> <p>25 numerous ways. They could make a phone call from the facility,</p>	<p style="text-align: right;">236</p> <p>Momyer - Direct 236</p> <p>1 to our customers, and that would be in a couple ways. One is</p> <p>2 the cost of ownership would be eliminated for the customer, so</p> <p>3 if it's Fisher-owned inventory sitting there, the customer is</p> <p>4 not going to have to pay any kind -- any taxes for that</p> <p>5 inventory sitting around in a crib. They don't have to pay for</p> <p>6 it until they used it. That's one; cost of ownership goes</p> <p>7 down.</p> <p>8 Secondly -- and often what would happen would be there</p> <p>9 would be the ability for the customer to reallocate a person</p> <p>10 who was taking orders at their site, procurement person, or</p> <p>11 even reallocating a crib attendant to another job. These are</p> <p>12 Fisher personnel, Fisher paid for them.</p> <p>13 Q It had some benefits obviously therefor. Did it have some</p> <p>14 problems, some issues associated with it?</p> <p>15 A Yeah. There would have been some problems with it.</p> <p>16 Typically, if we take a look at the requisition itself coming</p> <p>17 in, there often, if we had to seek approval on a req, it came</p> <p>18 in from someone and we didn't know if that person had approved</p> <p>19 req, we --</p> <p>20 Q Req?</p> <p>21 A Requisition.</p> <p>22 Q Okay, thank you.</p> <p>23 A We would have to -- very often a req, requisition would</p> <p>24 come in with a piece of paper saying, give me a test tube, and,</p> <p>25 of course, there are many types of test tubes. So what the</p>

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<p style="text-align: right;">237</p> <p>Momyer - Direct 237</p> <p>1 customer service person would have to do is they'd have to</p> <p>2 discern what particular test tube had been requested. So</p> <p>3 either they do that by contacting the requester back, or they</p> <p>4 would pull the catalog down, take a look at it, try and do some</p> <p>5 research and contact the requester back.</p> <p>6 Q Let me stop you there and ask you this question: You</p> <p>7 talked about this customer services representative. Could the</p> <p>8 customer actually, the end user, person who wanted the test</p> <p>9 tube, could they use the RIMS system themselves?</p> <p>10 A No. It was a system that was fairly specific to a</p> <p>11 customer service or Fisher personnel would use, there was</p> <p>12 nomenclature on the screen that was unique to Fisher. There</p> <p>13 was also some information that were on the screen that we</p> <p>14 really wouldn't want our customers to see, like costs of the</p> <p>15 product, so it was a system that we did not choose to expose to</p> <p>16 our customers.</p> <p>17 Q So the end user, the customer, had no capability to use</p> <p>18 this requisition inventory management system by his or herself?</p> <p>19 A No.</p> <p>20 Q If, though, a customer or this end user who wanted to</p> <p>21 obtain product made a request, or however it was, by telephone</p> <p>22 call or by sending interoffice envelope, what would happen next</p> <p>23 in this process using the RIMS?</p> <p>24 A We got into a little bit of it. The customer service rep</p> <p>25 would have to identify what the specific product was and really</p>	<p style="text-align: right;">239</p> <p>Momyer - Direct 239</p> <p>1 and by the product identification, I think what you could put</p> <p>2 in was the Fisher product number.</p> <p>3 Q Is that what you could enter in as a lookup feature for</p> <p>4 the RIMS system?</p> <p>5 A Yes.</p> <p>6 THE COURT: Excuse me, Mr. Robertson. I think we</p> <p>7 need to change court reporters here.</p> <p>8</p> <p>9 (Recess taken.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">238</p> <p>Momyer - Direct 238</p> <p>1 get it down, identification down to a Fisher product number,</p> <p>2 catalog number.</p> <p>3 That is the only way that the RIMS system was set up to</p> <p>4 operate, to identify products. You needed a Fisher part number</p> <p>5 to input to start the process going.</p> <p>6 THE COURT: So I'm ordering from you, I call and tell</p> <p>7 you, Mr. Momyer, I'd like to have such-and-such. You talk to</p> <p>8 me and tell me -- you are the CSR. You tell me, well, that's</p> <p>9 product number, our product such-and-such and such-and-such,</p> <p>10 and you put it down, and you are using RIMS, I don't have it;</p> <p>11 is that right?</p> <p>12 THE WITNESS: That's correct.</p> <p>13 Q You talked about the product number. Are we talking about</p> <p>14 Fisher product or other supplier product?</p> <p>15 A We're only talking about Fisher products at that time.</p> <p>16 The RIMS system only dealt with -- primarily dealt with Fisher</p> <p>17 products and Fisher products that Fisher purchased.</p> <p>18 Q And so if I wanted a specific product, did I need to know</p> <p>19 the Fisher part number in order to be able to look up and find</p> <p>20 out whether that was either available in inventory at the</p> <p>21 customer site or perhaps back at some Fisher warehouse?</p> <p>22 A Yes. The starting point for the whole process as far as</p> <p>23 entering a requisition into the RIMS system was identify who</p> <p>24 you were, and typically this would have been account number,</p> <p>25 and then who the customer was, and then identify the product,</p>	<p style="text-align: right;">240</p> <p>1 BY MR. ROBERTSON:</p> <p>2 Q I may have lost track. If the customer called up</p> <p>3 the CSR and has specific requests and the CSR was</p> <p>4 unfamiliar with their precise part or part numbers</p> <p>5 associated with that request, what would that CSR have</p> <p>6 to do?</p> <p>7 A They'd have to do some research on the request.</p> <p>8 Normally that research would involve accessing the</p> <p>9 hard copy catalog.</p> <p>10 Q So the CSR himself or herself would look through</p> <p>11 catalog and try and identify whatever product was the</p> <p>12 customer was receiving; is that right?</p> <p>13 A Yeah. The catalog would be organized in such a</p> <p>14 way that there would be some access to the taxonomy of</p> <p>15 the catalog. So, for example, if it was a beaker.</p> <p>16 Start looking in glassware. And there are indexes in</p> <p>17 the back saying beakers are on page 200 to 250. And</p> <p>18 they'd start looking at that. And they'd start</p> <p>19 getting some information from that.</p> <p>20 Probably if it was very unspecific, then they'd</p> <p>21 get to a certain point and they'd have to contact the</p> <p>22 requester back again and try to get some additional</p> <p>23 information.</p> <p>24 Q You mentioned this catalog, this paper catalog,</p> <p>25 that they had thousands or tens of thousands.</p>

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<p>241</p> <p>1 A Hundreds of thousands.</p> <p>2 Q Now, the RIM system on its database, did it</p> <p>3 contain every part number for every product that</p> <p>4 Fisher offered?</p> <p>5 A The only parts that were in the RIMS inventory</p> <p>6 database were those parts that the RIMS system was</p> <p>7 managing in inventory. Those are the only parts.</p> <p>8 Q So if I was a customer and I didn't have in the</p> <p>9 on-site inventory the Fisher-owned product, and I</p> <p>10 wanted to obtain a part that wasn't already in that</p> <p>11 database, could I use the RIMS system or not?</p> <p>12 A Yes, you could use the RIMS system.</p> <p>13 Q How would I do that?</p> <p>14 A The RIMS system had the ability to communicate to</p> <p>15 the Fisher host for obtaining information on products.</p> <p>16 When we talked about the first step in entering the</p> <p>17 req, a time req, in RIMS was to enter the pin number</p> <p>18 and the Fisher part number.</p> <p>19 Once that was entered, hit the enter key, there</p> <p>20 would be a series of business logic that would take</p> <p>21 place in the system. It would do a look-up first to</p> <p>22 see if that product was a product that was local in</p> <p>23 the inventory. If it didn't find it there, then it</p> <p>24 would proceed to connect up to the host.</p> <p>25 Once again, it's leaving the local system,</p>	<p>243</p> <p>1 distributor?</p> <p>2 A Yes.</p> <p>3 THE COURT: Did Fisher make anything?</p> <p>4 THE WITNESS: Yes, about a third of the</p> <p>5 products that it sold it manufactured.</p> <p>6 THE COURT: And it bought two-thirds of the</p> <p>7 other products it sold from other people and kept them</p> <p>8 in inventory or had some arrangement to get it to</p> <p>9 them?</p> <p>10 THE WITNESS: That's correct.</p> <p>11 Q What is this mainframe or host computer you</p> <p>12 described, sir?</p> <p>13 A Well --</p> <p>14 Q The one specifically we're talking about used in</p> <p>15 this RIMS system back in the late '80s and early</p> <p>16 '90's?</p> <p>17 A It would have been an IBM computer running an NBS</p> <p>18 operating system. I don't know if that helps or not.</p> <p>19 Q Well, but was it able to communicate with a local</p> <p>20 computer or something located --</p> <p>21 A Absolutely. We talked about it. There was a</p> <p>22 dataline between the RIMS computer and this mainframe.</p> <p>23 And that dataline allowed for the interaction,</p> <p>24 electronic interaction, between two computers.</p> <p>25 You basically -- the program would say, I need to</p>
<p>242</p> <p>1 systematically leaving it, and going up and talking to</p> <p>2 some programs that are on a host, which would do</p> <p>3 product validation, do some inventory sourcing, and</p> <p>4 pricing, and return that information back.</p> <p>5 Q Let me see if I understand this because you made</p> <p>6 reference to a few terms. I just want to make sure</p> <p>7 we're clear on what they mean.</p> <p>8 So if at the customer location where the</p> <p>9 Fisher-owned inventory is and the information, the</p> <p>10 part number, is not on a database there, the RIMS</p> <p>11 system had the ability to go back to -- and I think</p> <p>12 you referred to it as a host or host computer?</p> <p>13 A Yes.</p> <p>14 Q Was that a mainframe system at Fisher?</p> <p>15 A Yes, it was a mainframe system. When we were</p> <p>16 talking earlier, it's the same system that our</p> <p>17 customer service reps would have had. These customer</p> <p>18 service centers would have been taking the calls at</p> <p>19 the call center and entering the orders into --</p> <p>20 Q On the host computer, was that Fisher product as</p> <p>21 well?</p> <p>22 A Yes, it was Fisher product only.</p> <p>23 Q Well, where --</p> <p>24 A It would be Fisher products that Fisher would buy.</p> <p>25 Q And that Fisher would sell to its customers as a</p>	<p>244</p> <p>1 get information from the mainframe. And there would</p> <p>2 be a transaction that would be shipped across the</p> <p>3 dataline up to the mainframe, which would, for</p> <p>4 example, say, Validate this product. We had passed a</p> <p>5 block of data in this transaction across a dataline,</p> <p>6 and in that would be the product number. And then</p> <p>7 we'd call -- we would initiate the product validation</p> <p>8 routine, which we'd then say, Here's the product. Go</p> <p>9 look it up on the databases that are sitting on the</p> <p>10 mainframe.</p> <p>11 Q If the customer is requesting a product that was</p> <p>12 available, Fisher product inventory at its site, what</p> <p>13 would happen in that instance?</p> <p>14 A The second step in the process is to source it,</p> <p>15 and if it was a product that was not local, it was</p> <p>16 product that was stored within one of the Fisher's</p> <p>17 warehouses, there would be a request for availability</p> <p>18 transaction.</p> <p>19 It would be sent from the RIMS system, which is</p> <p>20 running local at the customer site over this dataline</p> <p>21 to the mainframe. And it would initiate a program</p> <p>22 which is availability program, which it would say,</p> <p>23 Here's this product. Go out and find where that</p> <p>24 product may be in any one of the Fisher distribution</p> <p>25 centers which would be across the United States.</p>

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<p>249</p> <p>1 to the host since the host was doing the sourcing of</p> <p>2 the product.</p> <p>3 And then from that point on Fisher's procurement</p> <p>4 would purchase the product for the customer and ship</p> <p>5 it to the customer site.</p> <p>6 Q I'd like to break that down if I could. There's a</p> <p>7 lot of information there. Could the CSR then try and</p> <p>8 order these non-catalog items using the RIMS system,</p> <p>9 could he or she do that directly?</p> <p>10 A No.</p> <p>11 Q You mentioned you'd have to send this order to</p> <p>12 procurement in order to obtain that. How is that</p> <p>13 process done?</p> <p>14 A What really happened was that there would be a</p> <p>15 form that would pop in the RIMS system which would be</p> <p>16 requesting the customer service rep to fill out some</p> <p>17 information that would identify that product.</p> <p>18 Remember, the product was not a Fisher catalog item.</p> <p>19 So the Fisher part number doesn't work anymore. So</p> <p>20 they had to fill out things like here's the vendor.</p> <p>21 Here's what I think the vendor part number is. Here's</p> <p>22 a description of that part. And some other additional</p> <p>23 information that would help identify that product to a</p> <p>24 procurement person at Fisher.</p> <p>25 So they'd fill that form out and submit it. And</p>	<p>251</p> <p>1 THE COURT: And then the next question is:</p> <p>2 And what did you do to do that? Is that right?</p> <p>3 Q I would like to ask you a few questions about some</p> <p>4 of the problems that were associated with the RIMS</p> <p>5 system, just generally a high view, and then what were</p> <p>6 some of the things you tried to do to solve those</p> <p>7 problems.</p> <p>8 A Okay. If you'd recall the problems that we were</p> <p>9 seeing where first of all our customer was soliciting</p> <p>10 information involving our customer service rep in</p> <p>11 helping identify products, find a product, source of</p> <p>12 product, and identify the product. We were spending a</p> <p>13 lot of time and effort in that research.</p> <p>14 So there's a lot of inefficiencies that were in</p> <p>15 play there, as well as the customer, in some cases,</p> <p>16 even though the customer service person did their best</p> <p>17 effort to try and discern what product it was,</p> <p>18 sometimes they really missed. It wasn't exactly what</p> <p>19 the customer wanted.</p> <p>20 So identifying the product and the entry of the</p> <p>21 product by the customer service person seemed to be an</p> <p>22 issue that we needed to resolve. So we went about</p> <p>23 that task. The problem was, we felt, was try and</p> <p>24 engage our customers to the process of giving them the</p> <p>25 information in their hands, to allow them to identify</p>
<p>250</p> <p>1 by submitting it, it would then move that transaction</p> <p>2 from the local computer up to the mainframe. And</p> <p>3 basically all that would happen at the mainframe would</p> <p>4 be it would print out at the procurement office a</p> <p>5 piece of paper saying this customer is requesting you</p> <p>6 to buy this for them.</p> <p>7 Q So this form, it's an electronic form, some</p> <p>8 information would be entered. Was there any way to</p> <p>9 use that form to do some search capabilities for that</p> <p>10 item?</p> <p>11 A No. All it is is a fill-in-the-blanks form.</p> <p>12 Q There would be some effort to make the description</p> <p>13 as to what the item might be, that would be</p> <p>14 electronically transmitted to this procurement</p> <p>15 individual?</p> <p>16 A Yes.</p> <p>17 Q And then he would make an effort to try and see</p> <p>18 where they might be able to locate this product; is</p> <p>19 that right?</p> <p>20 A Yes. In that case, they actually would be doing</p> <p>21 some sourcing.</p> <p>22 THE COURT: Did the next question come to be:</p> <p>23 Did you need to arrive at a way to do things better?</p> <p>24 Is that the next question, Mr. Robertson?</p> <p>25 MR. ROBERTSON: Yes, sir.</p>	<p>252</p> <p>1 the product, source of product, and then</p> <p>2 systematically submit that request.</p> <p>3 Q Do you know whether or not Fisher ever applied for</p> <p>4 a trademark with respect to this RIMS system?</p> <p>5 A I believe it did.</p> <p>6 Q Let me show you what's been marked as Defendant's</p> <p>7 Exhibit No. 61. It's in your notebook there. And ask</p> <p>8 you if you have seen this document before?</p> <p>9 A Which document is that?</p> <p>10 Q It's Defendant's Exhibit No. 61. It's towards the</p> <p>11 back.</p> <p>12 A I see it. I've got it.</p> <p>13 Q Have you ever seen this document before?</p> <p>14 A Yes, I have.</p> <p>15 Q Is this a technical document describing the</p> <p>16 capabilities of the Fisher RIMS system?</p> <p>17 A I would consider this a marketing document that we</p> <p>18 would use to introduce the high level features of the</p> <p>19 product.</p> <p>20 Q Are the specifics of the features of the product</p> <p>21 that you have been describing and testifying to today,</p> <p>22 are they set forth in detail in this marketing</p> <p>23 document?</p> <p>24 A Not in detail.</p> <p>25 Q Do you know whether this document was used by</p>

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<p>253</p> <p>1 technical people in utilizing the RIMS system you have 2 been discussing? 3 A No. No, it would not have been. 4 Q Do you know whether or not, if you want to just 5 peruse the document, whether it's actually discussing 6 all the features of the RIMS system? I can direct you 7 to the page that ends 598, for example. 8 A Some of them features were in the RIMS system. 9 Many of them were put in various releases of the 10 product. Some of the features were not actually 11 employed. 12 Q When you say not actually employed, you mean never 13 employed by the RIMS system? 14 A No. 15 Q When you say no, you mean that statement I just 16 made was correct? 17 A That's correct. The statement you made is 18 correct. We never did those. I think we had some 19 aspirations to do them, but we never pulled them off. 20 Q So could you just give me an example, if you 21 would? 22 A Under requisition management features, four down, 23 "Allows flexible remote requisitioning by formatted 24 screen," we really never provide for remote 25 requisitioning in the system.</p>	<p>255</p> <p>1 Q Could anybody obtain copies of the RIMS software 2 in the 1990s? 3 A No. 4 Q Did you need a password to get into the RIMS 5 software? 6 A Yes, you had to log into the system. 7 Q Were there product manuals associated with the 8 RIMS software? 9 A There were operating manuals, but they were 10 exclusively for use of the Fisher personnel. 11 Q Were they maintained proprietary to Fisher and 12 confidential? 13 A Yes. 14 Q Could Fisher's customers get copies of those 15 manuals? 16 A They shouldn't have. 17 Q Were they identified as being confidential to 18 Fisher? 19 A Yes. 20 MR. ROBERTSON: Your Honor, I'm about to get 21 into the electronic sourcing system and problems that 22 were solved. If I could ask your indulgence, Your 23 Honor, I could seriously use a short biological break. 24 THE COURT: I think all these people over 25 here have been here for a long time, and they could</p>
<p>254</p> <p>1 Q Anything else? 2 A The third point down in that requisition 3 management features, that's really kind of a bold 4 statement there. We did not interface all types of 5 purchases. We did have some interfaces. As I can 6 recall we had two interfaces that we developed, but it 7 wasn't all types. So it was somewhat restrictive. 8 Under "Inventory Control Features," if you take a 9 look at "Utilizes customized bar codes and labels to 10 expedite your receiving process," that feature was 11 talked about but never implemented. 12 And then finally under "System Customization 13 Features," we did utilize some file transfers, but we 14 never got to the point we used EDI. 15 Q Was the RIMS system then, the RIMS system that 16 Fisher created, and I think I understood you to say 17 went through many iterations, was that ever made 18 publicly available, the technical information? 19 A No. 20 Q If I wanted to learn more about the RIMS system in 21 the early '90s, would I have been able to do so? 22 A If you were an employee of Fisher. 23 Q Was it maintained proprietary and confidential to 24 Fisher? 25 A Yes.</p>	<p>256</p> <p>1 use a break a little longer than that, couldn't you? 2 They have been at it a long time. And if you're going 3 to start a new area of inquiry, we'll go with that. 4 So, ladies and gentlemen, if you will give 5 your notebooks to Mr. Neal with your names on them so 6 he can return them to you tomorrow, then you can go 7 home and relax. 8 Please don't discuss the case with anyone. 9 If someone wants to know what it's about and you feel 10 like you understand what it's about, you still can't 11 talk to them. You just blame me and tell them that I 12 said you are not allowed to do that. And then you'll 13 be free to do whatever you want to do tonight. And 14 we'll see you at 9:00 o'clock in the morning. 15 Mr. Compber, are you able to get here all 16 right without getting up at 4 a.m.? 17 A JUROR: Yes. 18 THE COURT: We'll have some coffee and bagels 19 here for you tomorrow. Thank you very much for your 20 careful attention. You're excused. 21 (The jury has exited the courtroom.) 22 THE COURT: How much longer do you think you 23 have of this witness? 24 MR. ROBERTSON: About an hour and 15 minutes 25 to an hour and a half, Your Honor.</p>

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<p>258</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA 2 RICHMOND DIVISION 3 ----- 4 ePLUS, INC., : 5 : 6 Plaintiff, : 7 v. : Civil Action 8 : No. 3:09CV620 9 LAWSON SOFTWARE, INC., : 10 : January 5, 2011 11 Defendant. : 12 ----- 13 14 COMPLETE TRANSCRIPT OF JURY TRIAL 15 BEFORE THE HONORABLE ROBERT E. PAYNE 16 UNITED STATES DISTRICT JUDGE, AND A JURY 17 18 APPEARANCES: 19 Scott L. Robertson, Esq. 20 Jennifer A. Albert, Esq. 21 Michael T. Strapp, Esq. 22 David M. Young, Esq. 23 GOODWIN PROCTOR 24 901 New York Avenue, NW 25 Washington, D.C. 20001 Craig T. Merritt, Esq. CHRISTIAN & BARTON 909 E. Main Street, Suite 1200 Richmond, VA 23219-3095 Counsel for the plaintiff ePlus DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT</p>	<p>260</p> <p>1 (The proceedings in this matter commenced at 2 9:30 a.m.) 3 THE CLERK: Civil Action No. 3:09CV00620, 4 ePlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer Albert, Mr. Michael T. Strapp, and 7 Mr. David Young represent the plaintiff. 8 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, 9 IV, Ms. Kirstin Stoll-DeBell, and Mr. William D. 10 Schultz represent the department. 11 Are counsel ready to proceed? 12 MR. ROBERTSON: Yes, Your Honor. 13 MR. McDONALD: Yes, Your Honor. 14 THE COURT: All right. Good morning, ladies 15 and gentlemen. 16 THE JURY: Good morning. 17 THE COURT: All right, Mr. Robertson, you may 18 resume your examination of the witness. 19 MR. ROBERTSON: Thank you, Your Honor. 20 THE COURT: And I remind you, sir, you're 21 under the same oath which you took yesterday. 22 THE WITNESS: Yes, sir. 23 BY MR. ROBERTSON: (Continuing) 24 Q MR. Momyer, we spent a good deal of time yesterday 25 discussing this RIMS system which you were named</p>
<p>259</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 MERCHANT & GOULD 6 3200 IDS Center 7 80 South Eighth Street 8 Minneapolis, MN 55402-2215 9 Dabney J. Carr, IV, Esq. 10 TROUTMAN SANDERS 11 Troutman Sanders Building 12 1001 Haxall Point 13 P.O. Box 1122 14 Richmond, VA 23218-1122 15 16 Counsel for the defendant Lawson Software. 17 18 19 20 21 22 23 24 25</p>	<p>261</p> <p>1 inventor along with Mr. Johnson. Do you recall that? 2 A Yes, I do. 3 Q I'd like to move on now to this electronic 4 sourcing system and method, the inventions that are 5 subject of the patents that are at issue here if we 6 could. All right? 7 A Okay. 8 Q Tab 1 in your witness notebook, I believe it's 9 Plaintiff's Exhibit No. 1, if you could go to column 10 1. 11 THE COURT: That's also in your small book 12 there if you need to. 13 Q And tab 2. Thank you. 14 So we're on column 1 now of the '683 patent, 15 Exhibit No. 1. Now, suggestion was made yesterday 16 that the Patent Office was unaware of the RIMS patent. 17 Did you disclose the RIMS patent to the Patent Office? 18 A Yes, I believe so. 19 MR. McDONALD: Objection, Your Honor. This 20 is going to the validity issue. Again, I thought we 21 were going to stick with infringement. 22 THE COURT: Isn't it? 23 MR. ROBERTSON: No, Your Honor. 24 THE COURT: Why does it have to do with 25 infringement?</p>

<p>262</p> <p>1 MR. ROBERTSON: Because there's going to be</p> <p>2 discussion as to scope of the claims and how they are</p> <p>3 to be applied to the accused product. And one of the</p> <p>4 embodiments that was raised was this RIMS embodiment,</p> <p>5 and I want to go and discuss in the claims whether</p> <p>6 they are limited to that RIMS embodiment or whether</p> <p>7 they are broader than that RIMS embodiment. It was</p> <p>8 raised during the opening statement as to whether RIMS</p> <p>9 was the essential component of the claims. So how the</p> <p>10 claims are to be applied to the accused system depends</p> <p>11 on how they are to be understood in the specification</p> <p>12 of the patent itself.</p> <p>13 THE COURT: It's in the patent, isn't it?</p> <p>14 MR. ROBERTSON: Well, the -- I mean --</p> <p>15 THE COURT: What kind of testimony is this?</p> <p>16 It sounds to me like expert testimony.</p> <p>17 MR. ROBERTSON: I just want to ask the</p> <p>18 witness --</p> <p>19 THE COURT: Look, what you want to ask the</p> <p>20 witness is one thing. He's objected to the question</p> <p>21 as invalidity. Is it or not?</p> <p>22 MR. ROBERTSON: It's not, Your Honor.</p> <p>23 THE COURT: You heard his argument, Mr.</p> <p>24 McDonald. What do you say?</p> <p>25 MR. McDONALD: I think he can talk to him</p>	<p>264</p> <p>1 Mr. Johnson, and Mr. Melly invented?</p> <p>2 A Yes.</p> <p>3 Q Did you identify in the patent whether or not</p> <p>4 there were some problems associated with the RIMS</p> <p>5 requisition and purchasing system for use in the</p> <p>6 patent?</p> <p>7 A Yes, we did identify several.</p> <p>8 Q Let me direct you, if I can, to the bottom of</p> <p>9 column 1. First, before I do that, at the top of</p> <p>10 column 1, starting at about line 10 through line 16,</p> <p>11 could we just -- is this the RIMS patent that we have</p> <p>12 identified that you're one of the inventors, the '989?</p> <p>13 A That wording is pulled out of '683, yes. '989 is</p> <p>14 the RIMS patent.</p> <p>15 Q So it's saying here that there were a number of</p> <p>16 known requisition and purchasing systems, is that</p> <p>17 right, including this Fisher RIMS system?</p> <p>18 A Yes.</p> <p>19 Q Now, if you will look down at the bottom of column</p> <p>20 1 starting at about line 60, going over to column 2</p> <p>21 around line 2, what are you representing there to the</p> <p>22 Patent Office with respect to these requisition and</p> <p>23 purchasing systems which include the Fisher RIMS</p> <p>24 system?</p> <p>25 A It identifies that there's some shortcomings to</p>
<p>263</p> <p>1 about RIMS and the difference between RIMS and the</p> <p>2 claims. That's fine. But I don't see what the</p> <p>3 disclosures to the Patent Office at this point in the</p> <p>4 trial, why we need to go into that.</p> <p>5 MR. ROBERTSON: Let me ask it this way.</p> <p>6 Q Was RIMS one of the embodiments that we're</p> <p>7 disclosed in the patent for requisition and purchasing</p> <p>8 module?</p> <p>9 A Yes.</p> <p>10 Q Do you know whether or not in your review of the</p> <p>11 specification --</p> <p>12 THE COURT: Wait a minute. Are you saying</p> <p>13 was RIMS disclosed as an embodiment of the patent, of</p> <p>14 the invention? Is that what your question was?</p> <p>15 MR. ROBERTSON: No. I'm saying, Your</p> <p>16 Honor --</p> <p>17 THE COURT: If that's the case, then this</p> <p>18 case -- we don't have a case, do we?</p> <p>19 MR. ROBERTSON: No, Your Honor.</p> <p>20 THE COURT: Then ask the question a different</p> <p>21 way.</p> <p>22 BY MR. ROBERTSON:</p> <p>23 Q Was RIMS identified as one of a requisition</p> <p>24 purchasing system that could be used as part of an</p> <p>25 embodiment of the invention that you Mr. Kinross,</p>	<p>265</p> <p>1 the requisition purchasing systems, including RIMS,</p> <p>2 for the ability to have a catalog be able to search</p> <p>3 multiple catalogs and then move that information into</p> <p>4 the requisition purchasing system.</p> <p>5 Q Are there any other problems that have been</p> <p>6 identified with these requisition and purchasing</p> <p>7 systems including RIMS in this section of the patent?</p> <p>8 A Yes. As you look down column 2, maybe line 10,</p> <p>9 computer systems for searching vendor catalogs are</p> <p>10 limited, and only one such vendor catalog is</p> <p>11 accessible to the user at any given time. They were</p> <p>12 also limited in they can only create a particular</p> <p>13 vendor catalog database.</p> <p>14 Q You have to go a little slower, Mr. Momyer.</p> <p>15 A Sorry. They were also limited in that they can</p> <p>16 only create an order within the particular vendor</p> <p>17 catalog database. They cannot source items to be</p> <p>18 requisitioned from a database containing multiple</p> <p>19 catalogs or interact with the requisition purchasing</p> <p>20 system or create a purchase order or orders including</p> <p>21 the items located from the sourcing operation.</p> <p>22 Q Now, you discussed this RIMS system throughout out</p> <p>23 the patent. Let me ask you to go to column 4 at the</p> <p>24 top. Did you indicate to the Patent Office that this</p> <p>25 RIMS system was necessary to your electronic sourcing</p>

<p>266</p> <p>1 patent?</p> <p>2 A I think it's preferably but not necessarily in the</p> <p>3 Fisher RIMS system is what it says in column 4.</p> <p>4 Q There's also a discussion here about a Technical</p> <p>5 Viewer 2 Search Program called TV/2. Do you see that</p> <p>6 as well?</p> <p>7 A Yes.</p> <p>8 Q Are you familiar with that program?</p> <p>9 A Yes.</p> <p>10 Q It indicates in your patent that that was a</p> <p>11 program that was available from IBM?</p> <p>12 A That's correct.</p> <p>13 Q Does it indicate that that program was necessary</p> <p>14 to your invention?</p> <p>15 A The wording says preferably but not necessarily in</p> <p>16 the Technical Viewer 2 Search Program.</p> <p>17 Q Let me direct you if I could to column 6 of the</p> <p>18 patent beginning at about line 34 going down to about</p> <p>19 line 39.</p> <p>20 A Column 6?</p> <p>21 Q Yes, sir.</p> <p>22 A Line 44?</p> <p>23 Q 34.</p> <p>24 A 34. Okay.</p> <p>25 Q You state here the following description</p>	<p>268</p> <p>1 if any of those claims recite --</p> <p>2 A Excuse me?</p> <p>3 Q I'd like you to go through the yellow claims that</p> <p>4 are tabbed in this notebook. There are 12 of them.</p> <p>5 You could quickly do it or if you know it from memory,</p> <p>6 perhaps you could just tell us. Do you know if within</p> <p>7 any of those claims that the inventors, yourself,</p> <p>8 specifically claimed TV/2 as a search program for</p> <p>9 searching the catalogs or the RIMS requisition and</p> <p>10 purchasing order system as constituting the means for</p> <p>11 building requisitions and means for generating</p> <p>12 purchase orders?</p> <p>13 A I'll look at the -- actually look at it. I don't</p> <p>14 trust my memory on that.</p> <p>15 THE COURT: You can take a look at it for a</p> <p>16 minute.</p> <p>17 While he's doing that are, ladies and</p> <p>18 gentlemen, if you'll look at, just take PX1 as an</p> <p>19 example, and turn to the first yellow tab. That</p> <p>20 begins a description of what are called claims. Now,</p> <p>21 if you'll look back one page, that's column 24, near</p> <p>22 the bottom, the lines are numbered in the middle, and</p> <p>23 you've got line 60 there. Do you see that? And right</p> <p>24 above that it says, "We claim." Do you see that? The</p> <p>25 "we claim" is where this case is all focused. This is</p>
<p>267</p> <p>1 illustrates the use of the Fisher RIMS as a</p> <p>2 requisition purchasing system and the TV/2 search</p> <p>3 program as a search program; however, it will be</p> <p>4 understood that the present invention is not limited</p> <p>5 to such system or program. Do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q Is that consistent with your understanding as to</p> <p>8 what you disclosed in your patent?</p> <p>9 A Yes.</p> <p>10 Q Well, so you used the Fisher RIMS system to</p> <p>11 describe certain features of functionality in your</p> <p>12 patent. Was it necessary to your patent to use the</p> <p>13 Fisher RIMS system?</p> <p>14 A No, it was not.</p> <p>15 Q You also use the TV/2 search program to describe</p> <p>16 certain capabilities and functionalities in your</p> <p>17 patent. Was it necessary for your patent, for your</p> <p>18 electronic sourcing patent?</p> <p>19 A No, it was not.</p> <p>20 Q Can I just -- I put a juror notebook over on your</p> <p>21 witness stand that the jury has, and in it starting at</p> <p>22 tab 2 are the three patents that are at issue here.</p> <p>23 And you'll see there are yellow tabs where the claims</p> <p>24 appear. And I'd like you to just briefly take a</p> <p>25 moment to go through any of those claims and tell us</p>	<p>269</p> <p>1 what is claimed to be the things that follow. We</p> <p>2 claim are the things that are claimed to be the</p> <p>3 inventions. The things that the Patent Office put the</p> <p>4 boundaries around by agreeing to these elements in</p> <p>5 these claims and by saying they are patentable.</p> <p>6 So I just want you to know that even though</p> <p>7 you start on column 25 with paragraph 3 where Claim</p> <p>8 Three is highlighted, it all starts before that have</p> <p>9 where it states "We claim."</p> <p>10 So you read "We claim: (1) An electronic</p> <p>11 sourcing system comprising," etc. Well, that's not at</p> <p>12 issue in this case. So then you go to, "We claim" and</p> <p>13 then read 3. What do we claim? "We claim an</p> <p>14 electronic sourcing system comprising," and then all</p> <p>15 of those elements follow. And then when you get to</p> <p>16 Claim 26 down at the bottom right-hand corner of that</p> <p>17 page, it's, "We claim a method comprising the steps</p> <p>18 of" and you do that every time you go to another</p> <p>19 numbered claim, such as those that were issue 28. And</p> <p>20 that's all on this patent, isn't it, Mr. Robertson?</p> <p>21 MR. ROBERTSON: Yes, sir.</p> <p>22 THE COURT: Okay. And then you follow the</p> <p>23 same methodology in any patent. Pardon me. You can</p> <p>24 go ahead now.</p> <p>25 Have you read the patents?</p>

<p>282</p> <p>1 disclosure, for all three patents is substantially</p> <p>2 similar or almost identical. I'm willing to stipulate</p> <p>3 that that's way case. If you want to just take a</p> <p>4 minutes to confirm that for yourself, I'm happy to do</p> <p>5 it.</p> <p>6 Is that your understanding as well?</p> <p>7 A Yes.</p> <p>8 Q So just generally now disclosing this</p> <p>9 cross-references capability, can you tell us what that</p> <p>10 was with regard to your invention?</p> <p>11 A Well, if you would select a product, the system</p> <p>12 would have the ability to provide for a matching item</p> <p>13 and allow the end user requisitioner to make a</p> <p>14 decision to resource product based upon the</p> <p>15 cross-referencing that appeared. It's a like item,</p> <p>16 it's a similar product, you have the opportunity to go</p> <p>17 out and resource this.</p> <p>18 THE COURT: So you could get Band-Aids, for</p> <p>19 example, if you wanted to buy Band-Aids, and you go to</p> <p>20 vendor A, which is Johnson & Johnson, and vendor C,</p> <p>21 which is CVS, and D, which is Rite-Aid, you can</p> <p>22 display the same kind of Band-Aid. And then you can</p> <p>23 compare the price and say, Well, I want the one from</p> <p>24 Johnson & Johnson because even though Rite-Aid is</p> <p>25 cheaper, there are more of them in a package, or for</p>	<p>284</p> <p>1 concepts that you want to include in this electronic</p> <p>2 sourcing system invention. Can you tell the jury some</p> <p>3 of the steps that you went through to develop the</p> <p>4 invention? I'd just like you to start at a level, if</p> <p>5 you could, of the design because I don't want to get</p> <p>6 into the specifics of the modification, for example,</p> <p>7 of TV/2 or RIMS, which will be for Mr. Johnson to talk</p> <p>8 about.</p> <p>9 A Okay. The development would have followed the</p> <p>10 normal path as many software development projects.</p> <p>11 There was a gathering of requirements and stating</p> <p>12 those requirements. And then following the</p> <p>13 requirements, a development of a specification as to</p> <p>14 how things should work at a high level and then more</p> <p>15 detailed level designs as far as individual programs</p> <p>16 and how they should work.</p> <p>17 Q What is this requirements? Is it a document?</p> <p>18 A Yes.</p> <p>19 Q Can you just briefly describe it for us? What's</p> <p>20 the nature of this requirements document?</p> <p>21 A It defines the problem and it defines the approach</p> <p>22 to solving the problem.</p> <p>23 Q Then you mentioned the design specifications. Is</p> <p>24 that where you get into the drill down --</p> <p>25 A Yes. You take the results of the requirements</p>
<p>283</p> <p>1 whatever reason?</p> <p>2 THE WITNESS: That's correct.</p> <p>3 THE COURT: The cross-reference feature is</p> <p>4 what allows you to make that comparison?</p> <p>5 THE WITNESS: That's correct.</p> <p>6 THE COURT: All right.</p> <p>7 BY MR. ROBERTSON:</p> <p>8 Q Was that capability considered to be a valuable</p> <p>9 attribute?</p> <p>10 A I think it was an important part of comparison</p> <p>11 shopping, that you need that.</p> <p>12 Q You mentioned this team was working on this in the</p> <p>13 '93-'94 time period. Can you tell me how often did</p> <p>14 you meet during that time?</p> <p>15 A Well, myself and Jim Johnson and Bob Kinross would</p> <p>16 have met daily, if not hourly. My office was next to</p> <p>17 theirs and we were constantly discussing the</p> <p>18 development.</p> <p>19 Q Do you know how much of the team members' time</p> <p>20 during this period was devoted to this project?</p> <p>21 A Jim Johnson and Bob Kinross' were pretty much</p> <p>22 100 percent of their time was devoted to that. Mine,</p> <p>23 I did have some other responsibility. So I had a</p> <p>24 little bit less. Maybe 75 percent.</p> <p>25 Q So starting now with -- you have arrived at these</p>	<p>285</p> <p>1 saying this is what you need to do, and then you would</p> <p>2 apply a more technical level as far as how you would</p> <p>3 go about doing it programmatically.</p> <p>4 Q Did the team encounter any difficulties along the</p> <p>5 way in the development of these inventions?</p> <p>6 A Yes.</p> <p>7 Q Can you tell us what some of those were?</p> <p>8 A Well, on the Technical Viewer side, we encountered</p> <p>9 quite a few problems as far as the performance, and it</p> <p>10 had to deal with some redesign of how we were going</p> <p>11 about some things.</p> <p>12 There were some missing requirements that we had</p> <p>13 to put in place. I think we encountered some issues</p> <p>14 as far as how we were going about interfacing between</p> <p>15 the requisition management piece and the electronic --</p> <p>16 the sourcing program. There were issues on dealing</p> <p>17 with that.</p> <p>18 And I think just on how we would connect and</p> <p>19 communicate out to the various suppliers was also kind</p> <p>20 of a challenge as to the approach we would take to do</p> <p>21 that, as well as how we would handle the unbundling of</p> <p>22 the requisition creating multiple P.O.s and keeping</p> <p>23 track of those multiple P.O.s and then tying that back</p> <p>24 to the requisition. There were a lot of issues that</p> <p>25 we even encountered.</p>

<p>286</p> <p>1 Q You mentioned this TV/2 program that you</p> <p>2 identified in your patent as being available from IBM.</p> <p>3 At some point did you have to hire an outside</p> <p>4 subcontractor to work with you with respect to that</p> <p>5 TV/2 program?</p> <p>6 A Yes.</p> <p>7 Q We're going to get into that in a minute, but was</p> <p>8 that outside subcontractor IBM?</p> <p>9 A Yes, it was.</p> <p>10 Q Did you give IBM the requirements for your</p> <p>11 electronic sourcing system?</p> <p>12 A Yes.</p> <p>13 Q Let me direct you, if I could, to figure 1B in the</p> <p>14 patent. This is the '683 patent I'll use, but it's</p> <p>15 the same figure in all three patents.</p> <p>16 THE COURT: What figure?</p> <p>17 MR. ROBERTSON: 1B, Your Honor.</p> <p>18 BY MR. ROBERTSON:</p> <p>19 Q Do you recognize this figure from your patent,</p> <p>20 sir?</p> <p>21 A Yes.</p> <p>22 Q What is this attempting to illustrate?</p> <p>23 A This is the high level diagram. It would reflect</p> <p>24 a representation of a client's server, a</p> <p>25 representation of our system, our architectural</p>	<p>288</p> <p>1 where we would be getting information whenever we</p> <p>2 would source the product.</p> <p>3 We would go there to get the price of a product as</p> <p>4 well as its availability and would also ultimately</p> <p>5 turn around and submit an order whenever the</p> <p>6 requisition had turned into an approved requisition to</p> <p>7 become a P.O.</p> <p>8 Q And the host computer?</p> <p>9 A We would pass information to the host computer to</p> <p>10 build the order. Basically, the local computer in</p> <p>11 this case would be passing a sales order to the host</p> <p>12 computer, which would turn that into a purchase order.</p> <p>13 Q So you have described in general terms some of the</p> <p>14 functionality that you needed for this electronic</p> <p>15 sourcing system invention?</p> <p>16 A Yes.</p> <p>17 Q I sort of wanted to go to, using this figure,</p> <p>18 whichever box controls certain functionality that you</p> <p>19 described. Can we do that?</p> <p>20 A Sure.</p> <p>21 Q Let me just specifically ask you which box</p> <p>22 controls or which is supposed to --</p> <p>23 THE COURT: Mr. Robertson, you asked him to</p> <p>24 define something that he didn't define. Explain the</p> <p>25 rest of what you were talking about. You got off the</p>
<p>287</p> <p>1 system.</p> <p>2 Q When you say "client's server," are you talking</p> <p>3 about some kind of networked embodiment?</p> <p>4 A Yes.</p> <p>5 Q Can you explain what you mean by "client server"</p> <p>6 then more specifically for the jury?</p> <p>7 A Sure. A client server fairly simply is that parts</p> <p>8 of the system will run on two different processors, at</p> <p>9 least two different processors. In this case, the</p> <p>10 local computer as well as the server. And the</p> <p>11 interaction between the client and server is kind of</p> <p>12 what makes up the system.</p> <p>13 Q So you mentioned the local computer, which is</p> <p>14 identified here with a number 220. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q You have identified the server, which is</p> <p>17 identified here as 200. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And there's also a host computer, 210?</p> <p>20 A Yes.</p> <p>21 Q Can you tell us the difference between these local</p> <p>22 computers, the host computers, and the server in</p> <p>23 context of your invention?</p> <p>24 A Well, the host computer would be the computer that</p> <p>25 would be at the suppliers/distributors site, and it's</p>	<p>289</p> <p>1 track. Where is the local computer?</p> <p>2 THE WITNESS: The local computer would be the</p> <p>3 computer in this case that is running the components</p> <p>4 off to the left, the shell, the graphical user</p> <p>5 interface, and the requisition purchasing program.</p> <p>6 THE COURT: Is that usually in the buyer's</p> <p>7 facility? Is it a buyer's computer? Is it your</p> <p>8 company's computer?</p> <p>9 THE WITNESS: No.</p> <p>10 THE COURT: You stated the host computer was</p> <p>11 the suppliers.</p> <p>12 THE WITNESS: Yes. This would be the</p> <p>13 customer's, the customer using this. It could be the</p> <p>14 customer's purchasing department, but it could be a</p> <p>15 researcher at the customer's facility as well.</p> <p>16 THE COURT: But it's not in your facility,</p> <p>17 and it's not at the distributor's. The server is</p> <p>18 where?</p> <p>19 THE WITNESS: The server is the local, it's</p> <p>20 the customer.</p> <p>21 THE COURT: So the server is the customer?</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. ROBERTSON:</p> <p>24 Q Does the server have access to catalog databases?</p> <p>25 A Yes. If we take a look, that's where the catalog</p>

<p>290</p> <p>1 database is actually stored.</p> <p>2 Q There's a box here identified as a graphical user</p> <p>3 interface, 254. What is that, sir?</p> <p>4 A The user interface being, of course, what an</p> <p>5 individual -- how they would interact with the</p> <p>6 application. And graphical being it has both text and</p> <p>7 images on it.</p> <p>8 So today we think of the normal application at a</p> <p>9 Web environment. When you bring up a program, what</p> <p>10 you see and what you're interacting with would be a</p> <p>11 graphical user interface.</p> <p>12 Q Can you give us an example of one currently</p> <p>13 available that illustrates your point?</p> <p>14 A Google. You go to Google and bring up the initial</p> <p>15 search screen on Google, that would be user interface.</p> <p>16 THE COURT: The screen on Google that says</p> <p>17 "famous football players of 1902," where you type that</p> <p>18 in, and then you hit search. You're saying the user</p> <p>19 interface is the page that presents that?</p> <p>20 THE WITNESS: That's correct. And the</p> <p>21 initial screen. When you bring up Google, that is the</p> <p>22 user interface. So when you enter the search</p> <p>23 information, you're entering that search information</p> <p>24 into a user interface. The results you get back is</p> <p>25 also a graphical user interface. So it's really</p>	<p>292</p> <p>1 Q What box?</p> <p>2 A 200.</p> <p>3 Q The search program?</p> <p>4 A Yes. 250 is the search program. I'm sorry. I</p> <p>5 thought you said what box was it on.</p> <p>6 Q Why do you need all four of these functionalities</p> <p>7 in order to search multiple catalogs?</p> <p>8 A Well, the search program in and of itself doesn't</p> <p>9 really do what we needed to do. And that's one reason</p> <p>10 why we needed to develop a shell to control the search</p> <p>11 program to fulfill the requirements that we needed for</p> <p>12 searching.</p> <p>13 Q Is there a box identified in this figure 1B that</p> <p>14 illustrates how you have the ability to determine</p> <p>15 whether an item that you were selecting was available</p> <p>16 in the vendor's inventory?</p> <p>17 A It would be on the 260, work in process</p> <p>18 requisition.</p> <p>19 Q Did the host computer have the ability to provide</p> <p>20 information with respect to vendor availability?</p> <p>21 A Yeah, you would start with a work in progress</p> <p>22 requisition, go to requisition purchasing program,</p> <p>23 back up to the host program. The flow would be work</p> <p>24 in process, requisition, past the requisition</p> <p>25 purchasing program and say, Here's a list of programs.</p>
<p>291</p> <p>1 what's displayed out to the user and what they</p> <p>2 interact with.</p> <p>3 Q What is box 252, shell?</p> <p>4 A The shell program is -- it's an application that</p> <p>5 allows the system to direct the search program and</p> <p>6 kind of give it directions on what to do. It's an</p> <p>7 API, application program interface, into the search</p> <p>8 program. So it instructs the search program what</p> <p>9 catalogs that you're searching. It will control the</p> <p>10 hit list that comes back as far as what you selected,</p> <p>11 and actually ultimately will control what's been</p> <p>12 selected and move off into a list of items that's</p> <p>13 selected that get passed to the requisition.</p> <p>14 Q Who had responsibility for creating that</p> <p>15 functionality on your team?</p> <p>16 A It was Bob Kinross' area.</p> <p>17 Q I'll let Mr. Kinross describe what we need to do</p> <p>18 there.</p> <p>19 Which box in this figure 1B controls the ability</p> <p>20 to search the multiple catalogs?</p> <p>21 A Actually, the graphical user interface would talk</p> <p>22 to the shell, and the shell program would instruct the</p> <p>23 search program on what to do.</p> <p>24 Q And where is the search program identified?</p> <p>25 A That's right on the server side.</p>	<p>293</p> <p>1 The sourcing of the item would occur in 240 and</p> <p>2 communicate up to the host, 210.</p> <p>3 Q If we could just for a moment remove all the color</p> <p>4 from figure 1B. And I'd like you to tell us in the</p> <p>5 development of your electronic sourcing system</p> <p>6 inventions, which of these boxes had to be created or</p> <p>7 modified from the existing RIMS system or the TV/2</p> <p>8 program?</p> <p>9 A Okay. The shell program actually had to be</p> <p>10 developed. We had to make some modifications to that.</p> <p>11 We had no graphical user interface at all for any of</p> <p>12 the RIMS system or started off as kind of a base code</p> <p>13 for that. There was no work in process, obviously,</p> <p>14 since we weren't pulling anything from a catalog.</p> <p>15 There were pretty substantial changes to the</p> <p>16 requisition and purchasing program. I'm talking about</p> <p>17 the whole work flow, in that place, as well as</p> <p>18 handling the multi line, multi P.O. requisition.</p> <p>19 There would have been changes to the search</p> <p>20 program. We had to make a catalog database. There</p> <p>21 were changes that were made to that as well. And</p> <p>22 complete requisitions would have been different and</p> <p>23 change would have had to have been made to that.</p> <p>24 The other area I think we probably should -- the</p> <p>25 communication between the local computer and the host</p>

<p>294</p> <p>1 computer would have been changed as well to allow us</p> <p>2 to talk to the host, and the format to which we talked</p> <p>3 to the host would have changed.</p> <p>4 Q As far as your invention, you wouldn't need to</p> <p>5 reinvent what a keyboard was for a computer, did you?</p> <p>6 A No.</p> <p>7 Q You didn't need to reinvent what a printer was for</p> <p>8 your invention, correct?</p> <p>9 A That's correct.</p> <p>10 Q You could use those tools as part of your overall</p> <p>11 invention, correct?</p> <p>12 A That's correct.</p> <p>13 Q You didn't need to reinvent the computer in order</p> <p>14 to do your invention, correct?</p> <p>15 A That is correct.</p> <p>16 Q Let me direct you, if I could, to figure 1A, which</p> <p>17 is another embodiment disclosed in the patent. Are</p> <p>18 you familiar with this figure?</p> <p>19 A Yes.</p> <p>20 Q You talked before about this networked environment</p> <p>21 in figure 1B. What is being illustrated in figure 1A?</p> <p>22 A This is where actually all of the system is</p> <p>23 running on, well, two levels. One is at the local</p> <p>24 computer level. And the other is at the host level.</p> <p>25 Q I'm sorry. I didn't hear what you said.</p>	<p>296</p> <p>1 program actually exist on one processor, one machine.</p> <p>2 And that's in the local computer. And it talks to the</p> <p>3 host computer.</p> <p>4 So we've taken out the server. Basically, it's no</p> <p>5 longer a client server. It's now a two-tier</p> <p>6 architecture.</p> <p>7 Q When you say you have taken out the server, is</p> <p>8 this software operating on that local computer?</p> <p>9 A Yes.</p> <p>10 Q It still can be connected to a host computer and</p> <p>11 host databases, correct?</p> <p>12 A That's correct.</p> <p>13 Q What are they again? Can you refresh us on that?</p> <p>14 A The host computer would be, in our system, would</p> <p>15 be the supplier or distributor's computer. That's the</p> <p>16 one we're asking for price availability and order</p> <p>17 placement.</p> <p>18 Q In this embodiment, this configuration, can you</p> <p>19 tell us what functionality needed to be modified or</p> <p>20 revised or reprogrammed or invented from scratch?</p> <p>21 A Sure. Let's first go to the top of the databases</p> <p>22 themselves. And this is really based upon using the</p> <p>23 RIMS system as the starting point for the development.</p> <p>24 Q Let me just stop you there. There is a number 40</p> <p>25 there that says RIMS with two arrows pointing there.</p>
<p>295</p> <p>1 A The local and host level.</p> <p>2 Q Okay. Now --</p> <p>3 THE COURT: I don't know that anybody really</p> <p>4 understood what was being said there. Perhaps you two</p> <p>5 because you know so much about this.</p> <p>6 Start over again.</p> <p>7 MR. ROBERTSON: Sure.</p> <p>8 Q Can you explain how this is a different</p> <p>9 environment -- let me just finish the question so it's</p> <p>10 not garbled on the record. How it's a different</p> <p>11 environment from the environment that is depicted in</p> <p>12 networked environment in figure 1B?</p> <p>13 A Sure. If we could go back to 1B real quick and</p> <p>14 take a look. There are three pieces here within this</p> <p>15 architecture. There's a local computer, which in this</p> <p>16 environment housed the programs, the requisition</p> <p>17 purchasing program, the shell program, the overall</p> <p>18 user interface. And the server side, which composed</p> <p>19 the search program, the databases, both the</p> <p>20 requisition databases, a complete requisition of the</p> <p>21 catalog base, as well as the host computer. So there</p> <p>22 are really three pieces to that.</p> <p>23 And if we go to 1A, we've eliminated the server</p> <p>24 piece of that. So the databases, the application or</p> <p>25 requisition application, and the shell, and the search</p>	<p>297</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Now, when you discuss what needed to be modified,</p> <p>4 I'd like to you do it in context of whether or not the</p> <p>5 RIMS 40 that's described there needed to be modified</p> <p>6 revised reprogrammed or changed in any way?</p> <p>7 A All right. Let's start at the top. 42A42B42C the</p> <p>8 databases. Requisition database would have had to</p> <p>9 have changed because we have to start carrying the</p> <p>10 vendor, the vendor information. In the RIMS system,</p> <p>11 we only had a single vendor, and that was Fisher.</p> <p>12 In the inventory databases, that really included</p> <p>13 inventory as well as the product information. The</p> <p>14 part master would have changed there as well.</p> <p>15 Customer specific databases would not have</p> <p>16 changed. Do I need to explain what that is?</p> <p>17 Q Yes. Why don't you identify what kind of</p> <p>18 information is in that database.</p> <p>19 A That information would allow us to kind of tailor</p> <p>20 the input of a customer. If they want to start</p> <p>21 capturing information on the requisition, for example,</p> <p>22 if they wanted to capture their reqs. by a department</p> <p>23 number, accounting code, that would allow us to</p> <p>24 customize their input to allow them to enter that</p> <p>25 information. We do validation against that. So it's</p>

<p>298</p> <p>1 the customer specific data.</p> <p>2 So on the top level, the databases --</p> <p>3 Q Let me just top you there. Was that a service</p> <p>4 that you just provided that would assist the customers</p> <p>5 in how they did their own process work flow?</p> <p>6 A Yes.</p> <p>7 Q Is that part of any of the claims you have seen in</p> <p>8 your invention?</p> <p>9 A No.</p> <p>10 Q All right. Thank you.</p> <p>11 A No.</p> <p>12 Q You can go forward.</p> <p>13 A On the bottom level, 44C, requisition maintenance</p> <p>14 would also change since we were adding the multiple</p> <p>15 lines to it. The ability to add vendor information.</p> <p>16 We have that whole work flow we talked about is being</p> <p>17 put in place. And the process of dealing with the</p> <p>18 multiple P.O.s from multiple requisition lines to</p> <p>19 generate multiple P.O.s, there would have been a</p> <p>20 change there.</p> <p>21 Inventory sourcing would have changed because it</p> <p>22 would have -- now we're talking to multiple vendors</p> <p>23 and sourcing out to them. So that communication would</p> <p>24 have changed, as well as the content. The change</p> <p>25 itself would change.</p>	<p>300</p> <p>1 Q Did IBM provide some business software solutions</p> <p>2 that were used by Fisher-Scientific?</p> <p>3 A Well, yes. Actually, they provided some internal</p> <p>4 software. Obviously, we bought their hardware, but</p> <p>5 their operating system. Transaction processor was</p> <p>6 called CICS. We purchased off of them. The database</p> <p>7 management system, DB2, we purchased off of them. I</p> <p>8 think we were running some of their inventory</p> <p>9 warehousing system.</p> <p>10 Q When you were trying to identify some sort of</p> <p>11 search capability or search program or document viewer</p> <p>12 for your electronic sourcing system, did somebody on</p> <p>13 your team conduct any investigation to see what might</p> <p>14 be available out there?</p> <p>15 A Bob Kinross was given the responsibility for</p> <p>16 identifying possible search program candidates.</p> <p>17 Q Do you know whether he identified more than just</p> <p>18 TV/2?</p> <p>19 A He did. He had several programs that he had</p> <p>20 identified.</p> <p>21 Q At some point in time the decision came to meet</p> <p>22 with people at IBM concerning this TV/2; is that</p> <p>23 right?</p> <p>24 A Let me explain one of the reasons that we would</p> <p>25 have selected TV/2. It was kind of a criteria. A</p>
<p>299</p> <p>1 Req. order are all part of the requisition</p> <p>2 process. That would have changed as well. Customer</p> <p>3 variable data, that ties back to that customer</p> <p>4 specific database. That's the information that's</p> <p>5 pulled out from there. That is the changes for the</p> <p>6 RIMS system.</p> <p>7 And within the search area, obviously, we talked</p> <p>8 about it previously. The shell program would change.</p> <p>9 There's a lot of information. I think Mr. Kinross</p> <p>10 will probably go into the details of what's changed</p> <p>11 there. And the catalog database would have changed as</p> <p>12 well. And I think we'll go into details there in the</p> <p>13 Technical Viewer. Actually, some things changed there</p> <p>14 as well.</p> <p>15 Q And Mr. Kinross can address that?</p> <p>16 A Yeah. Do you want me to get into that?</p> <p>17 Q Not at that level, no. Thank you, sir.</p> <p>18 Now, with respect to this TV/2 from IBM, how did</p> <p>19 Fisher-Scientific and your group get introduced to</p> <p>20 IBM?</p> <p>21 A Well, IBM was a strong partner of Fisher. We had</p> <p>22 done business with IBM for a long period of time,</p> <p>23 purchasing their hardware and software. Fisher was a</p> <p>24 large enough installation to have an on-site account</p> <p>25 rep who was on site several times a week.</p>	<p>301</p> <p>1 couple of things that are important.</p> <p>2 One, the operating environment that we were</p> <p>3 running at that time was -- it was an OS/2 operating</p> <p>4 environment.</p> <p>5 Q It was a what?</p> <p>6 A It was an OS/2 operating environment.</p> <p>7 Q OS stands for operating system?</p> <p>8 A Yes.</p> <p>9 Q Was that an IBM product?</p> <p>10 A It was an IBM product. And TV/2 was built to work</p> <p>11 within that operating environment. The second thing,</p> <p>12 and probably the most important, was that of all the</p> <p>13 search programs that Bob had done investigation on,</p> <p>14 the Technical Viewer product was the one that would</p> <p>15 allow changes to the modifications. You can customize</p> <p>16 it. Most of the other versions were kind of out of</p> <p>17 the box. It is what you get. What you get is what</p> <p>18 you see. And you didn't have any ability to change</p> <p>19 it.</p> <p>20 We needed to customize it because we wanted to</p> <p>21 provide interface into this new procurement system we</p> <p>22 were developing.</p> <p>23 Q There came a time when you met with people at IBM</p> <p>24 with respect to this TV/2 program?</p> <p>25 A Yes.</p>

<p>306</p> <p>1 Q Have you looked for that requirements document?</p> <p>2 A Yes, I have.</p> <p>3 Q Have you been able to find it?</p> <p>4 A No.</p> <p>5 Q Were you able to take documents with you when you</p> <p>6 left Fisher-Scientific?</p> <p>7 A No, I was not.</p> <p>8 Q But at some point in time you entered into an</p> <p>9 agreement with IBM for this electronic catalog</p> <p>10 project; is that correct?</p> <p>11 A Yes.</p> <p>12 Q Can you take a look at Plaintiff's Exhibit No. 25</p> <p>13 that's in your book? Do you recognize that document?</p> <p>14 A Yes.</p> <p>15 Q What is it?</p> <p>16 A That is a statement of work.</p> <p>17 Q What's a statement of work?</p> <p>18 A A statement of work is a narrative as to what is</p> <p>19 involved in carrying out the instructions that would</p> <p>20 have been interpreted from the requirements document.</p> <p>21 THE COURT: It's a statement of work that IBM</p> <p>22 was supposed to do?</p> <p>23 THE WITNESS: That's correct.</p> <p>24 Q Did IBM work with Fisher personnel in</p> <p>25 accomplishing the tasks that are set forth in the</p>	<p>308</p> <p>1 Fisher-Scientific and IBM?</p> <p>2 A Yes.</p> <p>3 Q Does it indicate how much money Fisher-Scientific</p> <p>4 was going to be charged?</p> <p>5 A Yes, it does.</p> <p>6 Q How much is that?</p> <p>7 A \$620,000.</p> <p>8 Q If you will take a look at the page that ends with</p> <p>9 the Bates No. 287.</p> <p>10 THE COURT: The third page of the whole</p> <p>11 exhibit?</p> <p>12 MR. ROBERTSON: Yes, sir.</p> <p>13 A Okay.</p> <p>14 Q Under "project scope," do you see the No. 1</p> <p>15 development of a pilot and comprehensive electronic</p> <p>16 sourcing catalog using IBM Technical Viewer/2, TV/2;</p> <p>17 do you see that?</p> <p>18 A Yes.</p> <p>19 Q There are certain exceptions that are noted there.</p> <p>20 Do you see that?</p> <p>21 A Yes, I do.</p> <p>22 Q One is for subset searches. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Where does it indicate whether TV/2 has that</p> <p>25 ability or doesn't have that ability at the time of</p>
<p>307</p> <p>1 statement of work?</p> <p>2 A Absolutely.</p> <p>3 Q It's dated March 16, 1994. Do you see that?</p> <p>4 A Yes.</p> <p>5 Q Is that sort of consistent with your understanding</p> <p>6 about the time period this project got underway?</p> <p>7 A Yes.</p> <p>8 Q Why don't you take a look at the second to the</p> <p>9 last page. And you see there's a -- let me just for</p> <p>10 the record say it's page 21 of 22 in this document.</p> <p>11 THE COURT: Mine only has 19. What's the</p> <p>12 last page?</p> <p>13 MR. ROBERTSON: The last page of the</p> <p>14 document --</p> <p>15 THE COURT: What's the Bates number?</p> <p>16 MR. ROBERTSON: It ends with 305, Your Honor.</p> <p>17 THE COURT: Well, I do have a 305. And then</p> <p>18 I have a 306. But there's no page -- yes, there's</p> <p>19 page 21 of 22, but that looks like it's an exhibit</p> <p>20 page, not a page of the document.</p> <p>21 Anyway, it's the page that ends 305. Have</p> <p>22 you got that, sir?</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. ROBERTSON:</p> <p>25 Q Was this statement of work executed by</p>	<p>309</p> <p>1 this document?</p> <p>2 A It says it's not currently available.</p> <p>3 Q Were subset searches a necessary aspect of the</p> <p>4 electronic sourcing system invention you had?</p> <p>5 A Yes. Does everyone know what a subset search is?</p> <p>6 THE COURT: I don't think anybody does.</p> <p>7 Q Can you explain what a subset search is?</p> <p>8 THE COURT: I mean, the jury or me. I'm sure</p> <p>9 you-all know. Tell us what it is.</p> <p>10 A It's the ability to refine a search. So you do an</p> <p>11 initial search. You get a list back that you have</p> <p>12 found. It's quite long. And you want to go in and</p> <p>13 refine it. So, for example, in a laboratory supply</p> <p>14 example, you might say, Give me all the beakers, and</p> <p>15 you get a thousand beakers back. And now you want to</p> <p>16 refine that list, and you say, Well, give me all the</p> <p>17 150 milliter beakers. And then that will go through</p> <p>18 that subset that was returned and do a search against</p> <p>19 that.</p> <p>20 Q Is that an important aspect of --</p> <p>21 A I think it's critical --</p> <p>22 Q Let me just finish the question. Was that an</p> <p>23 important aspect of your invention?</p> <p>24 A Yes.</p> <p>25 Q And it says here that one of the exceptions TV/2</p>

<p>310</p> <p>1 can't do is Boolean logic services. They are not</p> <p>2 currently available in current releases of TV/2; do</p> <p>3 you see that?</p> <p>4 A Yes.</p> <p>5 Q What's a Boolean logic search?</p> <p>6 A It's and/or logic. So if you want to combine your</p> <p>7 search criteria, you can say, an example we gave, Give</p> <p>8 me search for beakers and 150 milliter, and that would</p> <p>9 then take those two and combine them together, and</p> <p>10 you'd get a more refined search. The or would be,</p> <p>11 Give me everything that says beaker and everything</p> <p>12 that has 150 milliter. So it includes everything.</p> <p>13 Q Would that be a helpful attribute for electronic</p> <p>14 sourcing system?</p> <p>15 A I think it seems pretty obvious it would be.</p> <p>16 Q Let me ask you to go to the page that ends with</p> <p>17 the Bates label, and I'm looking at the EPS label</p> <p>18 there.</p> <p>19 THE COURT: What are you saying?</p> <p>20 MR. ROBERTSON: I'm trying to get on the</p> <p>21 right page of the hymnal, Your Honor.</p> <p>22 THE COURT: Why don't you get there and then</p> <p>23 tell us where you are. Don't tell us how you get</p> <p>24 there, which is a bad habit that I have.</p> <p>25 MR. ROBERTSON: Okay.</p>	<p>312</p> <p>1 do you see that?</p> <p>2 A Yes.</p> <p>3 Q And underneath that is listed three bullet points.</p> <p>4 Could you just read those for the jury, please?</p> <p>5 A "Electronic sourcing demonstration program.</p> <p>6 Electronic sourcing pilot program. Electronic</p> <p>7 sourcing comprehensive program."</p> <p>8 Q And turn to the next page at the top. First</p> <p>9 paragraph states, Type 1A materials are those created</p> <p>10 during the project as derivative works of databases</p> <p>11 owned by Fisher including ownership of copyright. IBM</p> <p>12 will deliver one copy of these materials to Fisher and</p> <p>13 Fisher shall own the materials including ownership of</p> <p>14 copyright in the derivative work." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Who had ownership then of the type 1A materials</p> <p>17 under the statement of work?</p> <p>18 A Looks to be Fisher.</p> <p>19 Q Is that your understanding?</p> <p>20 A Yes.</p> <p>21 Q The third paragraph in this statement of work</p> <p>22 begins, "For a period of two years," do you see that?</p> <p>23 A Yes, I do.</p> <p>24 Q Just read it for the record. It says, "For a</p> <p>25 period of two years following the earlier of (A)</p>
<p>311</p> <p>1 BY MR. ROBERTSON:</p> <p>2 Q Why don't you go to the page that ends with the</p> <p>3 Bates label 5092292, the lower right-hand side. Do</p> <p>4 you see that?</p> <p>5 THE COURT: Revised 3-8-94 at the top,</p> <p>6 Mr. Robertson?</p> <p>7 MR. ROBERTSON: Yes, sir.</p> <p>8 A Got it.</p> <p>9 Q Now, I want to focus on deliverable materials. Do</p> <p>10 you see that?</p> <p>11 A Yes.</p> <p>12 Q It says under topic 1.5, The following items will</p> <p>13 be delivered to Fisher on your statement of work. Do</p> <p>14 you see that?</p> <p>15 THE COURT: Wait a minute. The page on the</p> <p>16 screen isn't the same that you're talking about.</p> <p>17 There you go.</p> <p>18 A Yeah, I see that.</p> <p>19 Q Okay. Now, there's a 1.5.1 type 1 materials. Do</p> <p>20 you see that?</p> <p>21 A Yes.</p> <p>22 Q And none are being delivered to Fisher-Scientific;</p> <p>23 do you see that?</p> <p>24 A Yes.</p> <p>25 Q Now, there's a heading 1.5.2, type 1A materials;</p>	<p>313</p> <p>1 completion of this statement of work, or (B)</p> <p>2 September 30, 1996, IBM will not assign the following</p> <p>3 employees: Harry Alexander, Jim Gomola, Pam Jenkins</p> <p>4 and Al Rolland to provide electronic catalog</p> <p>5 application development services to the following</p> <p>6 organizations," and I'll stop there. Do you see that?</p> <p>7 A Yes.</p> <p>8 Q What did you understand this restriction to</p> <p>9 entail?</p> <p>10 A That those employees of IBM couldn't work on any</p> <p>11 electronic catalog project.</p> <p>12 Q And they identify Baxter Health Care, Curtin</p> <p>13 Matheson or VWR Scientific. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Who were they?</p> <p>16 A They would have been competitors of Fisher at that</p> <p>17 time.</p> <p>18 Q It goes on to say nor were these individuals</p> <p>19 communicate during that period the key features of the</p> <p>20 overall design of type 1A materials to any of those</p> <p>21 three firms or to persons performing electronic</p> <p>22 catalog application development services for any of</p> <p>23 those three firms; do you see that?</p> <p>24 A Yes.</p> <p>25 Q Why did Fisher-Scientific want that provision in</p>

<p>330</p> <p>1 because you can't have any testimony about -- in a patent case</p> <p>2 that somehow doesn't relate to the invention in a general</p> <p>3 sense. That's not the focus. There needs to be a focus that's</p> <p>4 much more tailored here.</p> <p>5 I think that the objection is well taken as to the</p> <p>6 cross-examination because he didn't get into that, but you can</p> <p>7 call him back and put him on in your case and ask him anything</p> <p>8 you want to ask him about this. You can establish it, and I'll</p> <p>9 give you all a chance to brief if they object. They know it's</p> <p>10 coming in. They can file a brief, and I can look at it, but I</p> <p>11 don't think -- his direct examination wasn't such that it</p> <p>12 animates or opens the door to the issue that you're getting to.</p> <p>13 All right. Are we're ready for the jury now?</p> <p>14</p> <p>15 (Jury in.)</p> <p>16</p> <p>17 THE COURT: Go get the witness, please. Thank you,</p> <p>18 ladies and gentlemen. Sorry to inconvenience you. The</p> <p>19 objection is sustained. Go ahead.</p> <p>20 MR. McDONALD: Thank you, Your Honor.</p> <p>21 Q Mr. Momyer, with respect to the application that led to</p> <p>22 all three patents in this suit, you did sign an oath saying</p> <p>23 that you had reviewed that application and understood it;</p> <p>24 correct?</p> <p>25 A That's correct.</p>	<p>332</p> <p>1 THE COURT: Page and line?</p> <p>2 Q Mr. Momyer, could you turn to page 65, beginning at line</p> <p>3 22, please, of your December 9, 2009, deposition.</p> <p>4 A 65, and which line?</p> <p>5 Q Line 22. Do you see there where the question states, do</p> <p>6 you have an understanding that the electronic sourcing patents</p> <p>7 are essentially a requisition and purchasing system that, for</p> <p>8 example, can be a RIMS system that is set up to communicate</p> <p>9 with a catalog database and a search engine such as the IBM</p> <p>10 Technical Viewer 2 product? Do you see that question?</p> <p>11 A Yes.</p> <p>12 Q After the objection and it was read back, you answered</p> <p>13 that question yes; right?</p> <p>14 A Yes, I did say -- I did say yes.</p> <p>15 Q Thank you.</p> <p>16 A One thing I wanted to question, Mr. McDonald --</p> <p>17 MR. McDONALD: Well, I don't think we have a question</p> <p>18 pending right now. May I continue Your Honor?</p> <p>19 THE COURT: If you want to explain your answer, you</p> <p>20 lawyer will have a chance on redirect to do that.</p> <p>21 THE WITNESS: Okay.</p> <p>22 THE COURT: Unless you need to explain something.</p> <p>23 You seemed like you were adding something.</p> <p>24 THE WITNESS: I was.</p> <p>25 THE COURT: I think maybe we'll let Mr. Robertson</p>
<p>331</p> <p>1 Q And you said specifically that you had read and understood</p> <p>2 the claims; correct?</p> <p>3 A Yes, I did.</p> <p>4 Q So I'd like to talk about what you say you created and</p> <p>5 what your understanding is as to what was the system that's</p> <p>6 described in these patents. Now, isn't it true that these</p> <p>7 three patents, these all relate to electronic sourcing; right?</p> <p>8 A That's correct.</p> <p>9 Q And they are all essentially a requisition and purchasing</p> <p>10 system that, for example, can be the RIMS system set up to</p> <p>11 communicate with a catalog database and search engine such as</p> <p>12 the IBM Technical Viewer 2 product?</p> <p>13 A I think we have to qualify that. In the examples given</p> <p>14 would be the RIMS system after significant modification and the</p> <p>15 TV/2 system application after modification.</p> <p>16 Q Do you recall giving a deposition in this case in December</p> <p>17 of 2009?</p> <p>18 A Yes, I do.</p> <p>19 Q And you were sworn to tell the truth at that deposition;</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q And you did, didn't you?</p> <p>23 A Yes.</p> <p>24 MR. McDONALD: One moment. Can I hand up the</p> <p>25 deposition, Your Honor?</p>	<p>333</p> <p>1 deal with that on redirect.</p> <p>2 THE WITNESS: Okay.</p> <p>3 Q Now, with respect to the RIMS system, Mr. Momyer, that was</p> <p>4 described in a patent application in April of '93; correct?</p> <p>5 A Yes.</p> <p>6 Q If you need some help on that, I believe it's Plaintiff's</p> <p>7 Exhibit Number 10 in your notebook that ePlus gave you. That's</p> <p>8 the RIMS patent. The filing day was April 2nd, '93, for the</p> <p>9 RIMS patent?</p> <p>10 A Yes.</p> <p>11 Q So at least whatever features the RIMS patent had as of</p> <p>12 that April '93 date, it's fair to say that those features are</p> <p>13 pretty -- that description is a pretty comprehensive</p> <p>14 description of RIMS as it existed in April of '93?</p> <p>15 A There were some things that weren't developed that were in</p> <p>16 the patent.</p> <p>17 Q But they were described in the patent as something you</p> <p>18 were going to develop?</p> <p>19 A They were described as being in the patent but not that we</p> <p>20 were going to develop. They were things that as of '93, as</p> <p>21 of -- really have never been developed yet.</p> <p>22 Q You at least describe some functionality that you had</p> <p>23 conceived of at that time; right?</p> <p>24 A Yes.</p> <p>25 Q That's more than a year before the August '94 filing date</p>

<p>334</p> <p>1 on the patents involved in suit here; right?</p> <p>2 A Yes.</p> <p>3 Q Before April of '93, is it true that the RIMS system could</p> <p>4 search for items using a catalog search?</p> <p>5 A The search would be significantly different than the</p> <p>6 search in electronic sourcing.</p> <p>7 Q Well, you are not saying that with respect to the claims,</p> <p>8 are you? I'm just asking you, didn't the RIMS system have</p> <p>9 searching by part or catalog number?</p> <p>10 A It did look up by part.</p> <p>11 Q Didn't it have searching by part or catalog number in it?</p> <p>12 A I guess you need to define what you mean by search.</p> <p>13 Q Didn't you, in your own patent, because you were one of</p> <p>14 the inventors --</p> <p>15 A Search in that case would be a product lookup.</p> <p>16 Q Let me finish my question, please. As one of the</p> <p>17 inventors who also signed off on the RIMS system, isn't it true</p> <p>18 that you describe that search by part number as a search, not</p> <p>19 just a lookup; right?</p> <p>20 A It did say that, yes.</p> <p>21 Q Your application said that; right?</p> <p>22 A Yes.</p> <p>23 THE COURT: Is there some difference between a search</p> <p>24 and a lookup?</p> <p>25 THE WITNESS: Yes.</p>	<p>336</p> <p>1 would you consider that a catalog?</p> <p>2 A No.</p> <p>3 THE COURT: Was the parts master a catalog, is that</p> <p>4 your question?</p> <p>5 MR. McDONALD: That's right.</p> <p>6 Q What was the parts master in the RIMS system?</p> <p>7 A It had -- if you recall, it was only the local inventory</p> <p>8 records, and it really had everything that I recall except a</p> <p>9 vendor. It did not have a vendor in it since Fisher was a</p> <p>10 single vendor.</p> <p>11 Q So with respect to the distinction between the RIMS patent</p> <p>12 or product and what you were describing as your invention for</p> <p>13 the patents in this case, they both had searching, but the RIMS</p> <p>14 system didn't search catalogs specifically; is that fair?</p> <p>15 A Searched parts -- one searched parts lists and the other</p> <p>16 searched a catalog.</p> <p>17 THE COURT: One searched a parts list?</p> <p>18 THE WITNESS: Part master table is what it is.</p> <p>19 Q Parts master table, another term for that that you just</p> <p>20 used is a parts list; is that right?</p> <p>21 A Yes.</p> <p>22 Q Is that also sometimes called an item master?</p> <p>23 A Yes, it could be.</p> <p>24 Q As the sort of list a customer compiles themselves; right?</p> <p>25 A The customer compiles?</p>
<p>335</p> <p>1 Q If we turn to the exhibit tab ten, the RIMS '989 patent,</p> <p>2 if we go to figure three of that patent.</p> <p>3 A Which patent are you in?</p> <p>4 Q Exhibit 10 which is the RIMS patent.</p> <p>5 THE COURT: The RIMS patent which you have in front</p> <p>6 of you, and he wants to go to figure three which is on the page</p> <p>7 that has 1899 at the bottom of the right-hand corner.</p> <p>8 THE WITNESS: I see it.</p> <p>9 MR. McDONALD: If you can blow up the top four boxes</p> <p>10 on that page, please.</p> <p>11 Q So didn't you say there in box 202 that one of the steps</p> <p>12 here of the process after the customer service representative,</p> <p>13 or CSR, enters the stock number, and that gets entered into the</p> <p>14 requisition item table, that the local computer searches the</p> <p>15 parts master table for a stock number?</p> <p>16 A It searches the part master table, yes.</p> <p>17 Q Part master table, I'm sorry. So you did describe that as</p> <p>18 being a search within the part master specifically in RIMS;</p> <p>19 right?</p> <p>20 A Correct.</p> <p>21 Q That was a search for matching items; right?</p> <p>22 A It was a search for specific item.</p> <p>23 Q An item that matched the part number you put in; right?</p> <p>24 A Yes. An exact match.</p> <p>25 Q Okay. Now, was that parts master in the RIMS system,</p>	<p>337</p> <p>1 Q Well, doesn't the customer typically select the products</p> <p>2 to go on an item master or parts master?</p> <p>3 A When they are building up their item master.</p> <p>4 Q One item after another, the people deciding which items</p> <p>5 get on that parts master or items master is the customer;</p> <p>6 right?</p> <p>7 A Yes, using the system of whatever system you are using.</p> <p>8 THE COURT: If the customer is doing the selection,</p> <p>9 it's the customer, but if I do it and I'm not the customer,</p> <p>10 then I'm the one making it up; is that right or wrong, or does</p> <p>11 it always have to go through the customer?</p> <p>12 THE WITNESS: No, it doesn't have to go through the</p> <p>13 customer.</p> <p>14 Q The purposes of a parts master or item master is to track</p> <p>15 the inventory of an individual customer; correct?</p> <p>16 A Yes. That's one of purposes of it, is to hold inventory</p> <p>17 information. It also helps identify the product and give you</p> <p>18 some information about the product.</p> <p>19 Q It would be -- the purpose of that information in a parts</p> <p>20 master or an item master would be to give enough information to</p> <p>21 help reorder products for that customer for their inventory; is</p> <p>22 that fair?</p> <p>23 A Yes, or do -- the item master could have a list price in</p> <p>24 it as well.</p> <p>25 Q Is it typical -- you are familiar with catalogs that are</p>

<p>342</p> <p>1 it. The second question is equally objectionable. It is 2 sustained. 3 Q Would you agree -- 4 THE COURT: I gave the definition of catalog, what it 5 means in this case, and that's the only one that's counts. 6 Whether it's right or wrong, it's the one that counts, so he 7 can't give definitions of catalog. Nor can any other witness 8 give a definition of catalog, and I don't know why it wasn't 9 objected to begin with, but now that it has been, it is 10 sustained. 11 And I'm going to tell you to disregard his testimony 12 about what his opinion is on catalog as to either one of those 13 questions, because the definition you are bound by, ladies and 14 gentlemen, is the glossary of terms that is in your book which 15 is the claim construction given by the Court. All right. 16 Q Now, Mr. Momyer, did you understand that the invention as 17 claimed in the patents involved in this suit involved building 18 requisitions? 19 A Yes. That was one of the claims. 20 Q One of the elements of claims? 21 A Yes. 22 Q I understand we're giving shorthand, that there are other 23 words other than requisition, but one the words used was the 24 word requisition; right? 25 A (Indicating affirmatively.)</p>	<p>344</p> <p>1 third-party source for those products that Fisher acquired them 2 from; right? 3 A Third party being parts that weren't in the Fisher parts 4 master. 5 Q With that definition, are you agreeing with me then that 6 the RIMS system did allow Fisher to source products from 7 third-party sources? 8 A No. 9 Q So where did Fisher get those other products from? 10 A The RIMS system lodges source from Fisher. The Fisher 11 host system would determine where you would buy those products 12 from. 13 THE COURT: You are using the word "you" in your 14 answer. I understood from your testimony earlier that it was 15 the Fisher customer representative who had access to the 16 catalog. Is that the "you" you are talking about, or are you 17 talking about some other "you"? 18 THE WITNESS: I apologize. I wasn't sure where I 19 used the word "you." 20 THE COURT: You said you would source it. I thought 21 -- the customer rep was the one doing the sourcing, wasn't he? 22 THE WITNESS: Yes. 23 THE COURT: I would call you. You are the customer 24 rep. You say -- I say, I want a beaker. 25 THE WITNESS: Yes.</p>
<p>343</p> <p>1 Q Now, isn't it true that wasn't really a change from the 2 old RIMS system, the idea of generating requisitions in terms 3 of getting to the patents involved in this suit? 4 THE COURT: Wait a minute. That question was all 5 right until you add the prepositional phrase that you tacked on 6 at the end, so do it over again. 7 MR. McDONALD: All right. 8 THE COURT: Then it became a different issue. 9 Listen, are we going to pay attention to the questions over 10 there, folks, get with it? Let's go. 11 Q Mr. Momyer, would you agree that the RIMS system, the old 12 RIMS system that predates the patents here, that could build 13 requisitions? 14 A For a single source. 15 Q Well, we'll get to the source issue in a moment, okay, but 16 can just you answer -- 17 THE COURT: The answer is yes for a single source; is 18 that right? 19 THE WITNESS: Yes. 20 Q Isn't it true that the RIMS system had in it the data that 21 would relate to products that came from third-party vendors 22 other than Fisher? 23 A You would always order products through Fisher. So those 24 third-party products would have been purchased through Fisher. 25 Q So those third-party products were -- there was a</p>	<p>345</p> <p>1 THE COURT: Then you do the sourcing. I don't do the 2 sourcing as your customer; is that right? 3 THE WITNESS: That's correct. Someone at Fisher, 4 either a customer service rep or someone in the procurement 5 area of Fisher would do the sourcing of the product. 6 THE COURT: I think that you all are using this 7 indefinite pronoun "you," and I think -- it's hard enough to 8 follow, for the jury and me to follow the testimony on this 9 technical matter without you all being -- even when you are 10 being precise, but when you are being imprecise about what you 11 mean, it confuses the issues, and I think it's better if you 12 all try to be very specific in your questioning and not do 13 indefinite pronouns like "you." 14 MR. McDONALD: Let me try it a little differently, 15 Your Honor, see if I can eliminate that problem. 16 Q Is it fair to say that in the preferred embodiment 17 described in the patents-in-suit, you described a requisition 18 module from the old Fisher RIMS system? 19 A Yes. So that was the preferred embodiment for 20 requisitions in the patents-in-suit; right? 21 THE COURT: You mean that -- your question actually 22 was, was that one of the things disclosed in the preferred 23 embodiment, not was it the preferred embodiment, and you 24 converted it just now. I don't think you intended to, but -- 25 MR. McDONALD: Can we turn to figure 1A of the '683</p>

<p>350</p> <p>1 referring to short forms, and short form generally means that's</p> <p>2 the abbreviation I use -- I mean when I'm referring to this</p> <p>3 particular term, but if you don't use that particular</p> <p>4 abbreviation, then you're not doing the same thing. You're not</p> <p>5 referring to it. So let's kind of get with the program here.</p> <p>6 MR. McDONALD: Well, I can show you --</p> <p>7 THE COURT: Mr. Robertson, I don't want to be in the</p> <p>8 position of doing what you should be doing. Get on the program</p> <p>9 and do it. This is something that's important to the jury to</p> <p>10 understand, and Mr. Momyer is not a lawyer either, so we're</p> <p>11 dealing with legal issues or legal abbreviation formats, and</p> <p>12 let's get going.</p> <p>13 So the question he wants to know is, is that RIMS, as</p> <p>14 you use it in 40, are you using that on figure 1A, the same</p> <p>15 term you are using up in the front on column one, when you use,</p> <p>16 quote, Fisher RIMS, close quote? Is it the same or different?</p> <p>17 THE WITNESS: It's different.</p> <p>18 Q Could you turn to column four of the '683 patent at lines</p> <p>19 one through three, please.</p> <p>20 THE COURT: Line what?</p> <p>21 MR. McDONALD: One through three.</p> <p>22 THE COURT: Begins electronic sourcing?</p> <p>23 MR. McDONALD: Yes.</p> <p>24 THE COURT: System also includes a</p> <p>25 requisition/purchasing system 40, preferably but not</p>	<p>352</p> <p>1 Q Are you aware, Mr. Momyer, of anyplace in the patent, the</p> <p>2 '683 patent where you specifically say, actually the preferred</p> <p>3 embodiment I'm talking about is a modified version of that RIMS</p> <p>4 system that's in the patent application for the RIMS system?</p> <p>5 THE COURT: Can I see you up here please, gentlemen?</p> <p>6 Put the white noise on.</p> <p>7</p> <p>8 (Discussion at sidebar as follows:)</p> <p>9</p> <p>10 THE COURT: It says electronic sourcing also includes</p> <p>11 a requisition/purchasing system 40. Then it says, preferably</p> <p>12 but not necessarily the Fisher RIMS system. That's the same</p> <p>13 thing he said, and you're not impeaching him by asking him what</p> <p>14 you are asking him because you are trying to convert it into</p> <p>15 the fact that he's equating the two, and, in fact, the very</p> <p>16 language of the text you are talking about does not equate the</p> <p>17 two. It says it's preferable but not necessary, so I am -- you</p> <p>18 keep -- and the problem is in a case that's technical, if you</p> <p>19 ask questions or confuse the jury, it's a problem.</p> <p>20 You need to be aware of that and don't make</p> <p>21 objections about what is the wrong objection. You had a valid</p> <p>22 objection. You just didn't make the right one. Pay attention</p> <p>23 to what's happening. I know you've been in this case and tried</p> <p>24 this case three times, but this is a new case. That's this</p> <p>25 one. Listen to what's going on here. I don't want the jury</p>
<p>351</p> <p>1 necessarily the Fisher RIMS system, and a search program that</p> <p>2 is capable of searching through large volumes of information</p> <p>3 quickly and accurately; is that what you are talking about?</p> <p>4 MR. McDONALD: That's what I'm talking about.</p> <p>5 Q That sentence, the first half of it describes the system</p> <p>6 40 as preferably but not necessarily the Fisher RIMS system;</p> <p>7 right, Mr. Momyer?</p> <p>8 MR. ROBERTSON: Objection, Your Honor. That</p> <p>9 mischaracterizes what's disclosed there.</p> <p>10 THE COURT: He's just reading.</p> <p>11 MR. ROBERTSON: It says, includes the</p> <p>12 requisition/purchasing system 40, and then says, preferably but</p> <p>13 not necessarily the Fisher RIMS system.</p> <p>14 THE COURT: That's what he just said. I think that's</p> <p>15 as far as he went.</p> <p>16 MR. ROBERTSON: I think he said -- I thought the</p> <p>17 record will reflect he said 40 was the Fisher RIMS system. If</p> <p>18 I misunderstood, then I withdraw the objection and apologize.</p> <p>19 THE COURT: So the document says what it says, I</p> <p>20 think, is the answer to that. We don't need to have him agree</p> <p>21 that the document says what it says. Let's go.</p> <p>22 Q It does use that phrase Fisher RIMS that was in quotes</p> <p>23 back in column one talking about the RIMS system describing the</p> <p>24 patent application for RIMS; correct?</p> <p>25 A It does use the same words, yes.</p>	<p>353</p> <p>1 confused.</p> <p>2</p> <p>3 (End of sidebar discussion.)</p> <p>4</p> <p>5 Q Now, is it true -- I'd like to move to the issue of</p> <p>6 generating purchase orders, Mr. Momyer; all right?</p> <p>7 A Okay.</p> <p>8 Q Now, in the old RIMS patent, that describes that the local</p> <p>9 computer in the RIMS system can create purchase orders;</p> <p>10 correct?</p> <p>11 A The local -- no. The local computer cannot create</p> <p>12 purchase orders.</p> <p>13 THE COURT: In the RIMS patent; is that what the</p> <p>14 question was?</p> <p>15 MR. McDONALD: That's right.</p> <p>16 THE COURT: In the RIMS patent or system, the local</p> <p>17 computer cannot generate purchase orders; is that what you are</p> <p>18 saying?</p> <p>19 THE WITNESS: That's correct.</p> <p>20 Q Could you turn now in Exhibit 10, the RIMS '989 patent, to</p> <p>21 column 17.</p> <p>22 A Okay, '989.</p> <p>23 THE COURT: What is it, sir?</p> <p>24 THE WITNESS: Which exhibit is that?</p> <p>25 MR. McDONALD: Exhibit 10.</p>

<p>354</p> <p>1 THE COURT: It's the original RIMS patent on ten, and</p> <p>2 what page and line and so forth?</p> <p>3 MR. McDONALD: Column 17. I believe that's page 23.</p> <p>4 If you go to the sentence beginning -- paragraph beginning at</p> <p>5 line 35 of column 17. Blow up that paragraph, please.</p> <p>6 THE COURT: In either event, Mr. McDonald, is that</p> <p>7 the paragraph?</p> <p>8 MR. McDONALD: Yes.</p> <p>9 THE COURT: How far do you want to go?</p> <p>10 MR. McDONALD: The full paragraph, to about line 42.</p> <p>11 Q It's also up on the screen, Mr. Momyer. It might be a</p> <p>12 little bigger print on the screen.</p> <p>13 A I see that.</p> <p>14 Q Okay. Now, do you see in the second sentence of the</p> <p>15 paragraph, as described in the diagram, figures 5A and 5B, for</p> <p>16 items of product types 01, 03, and 04, local computer 40 uses</p> <p>17 purchase order build program 112 to create a purchase order</p> <p>18 between the customer and the distributor from the data in the</p> <p>19 requisition header and item tables. Do you see that?</p> <p>20 A 2A? Yes, I see that. It's --</p> <p>21 THE COURT: Your only question was, do you see it.</p> <p>22 You answered that yes, so if you have another question --</p> <p>23 THE WITNESS: Okay, sorry.</p> <p>24 Q So the local computer would create a purchase order</p> <p>25 between the customer and the distributor from data; correct?</p>	<p>356</p> <p>1 THE COURT: What's objectionable to the form?</p> <p>2 MR. ROBERTSON: As a whole? I don't understand what</p> <p>3 that means, the RIMS invention as a whole.</p> <p>4 THE COURT: Is your objection then it's ambiguous?</p> <p>5 MR. ROBERTSON: Yes, sir.</p> <p>6 THE COURT: Sustained.</p> <p>7 Q Mr. Momyer, would you agree that the RIMS system, which</p> <p>8 includes both the local computer and a host computer, generates</p> <p>9 purchase orders?</p> <p>10 A Yes.</p> <p>11 Q And the sentence talks about product types 01, 03, and 04;</p> <p>12 do you see that?</p> <p>13 A Yes.</p> <p>14 Q And do you know what those types are?</p> <p>15 A Yes, I do.</p> <p>16 Q What are they?</p> <p>17 A If product type 01 is a customer-owned inventory, that's</p> <p>18 locally represented, stored locally.</p> <p>19 Q Okay.</p> <p>20 A On a customer's site. 03 is a product type which is a</p> <p>21 product that's stored, would be stored within one of Fisher's</p> <p>22 warehouses, and 04 would be a product that would be -- an off</p> <p>23 catalog product that would be sourced from another vendor.</p> <p>24 Q Would be sourced from a third party; correct?</p> <p>25 A Yes.</p>
<p>355</p> <p>1 A No. It would pass data up to a host program which are</p> <p>2 figure 2B, number 120 purchase order. That's what would build</p> <p>3 the purchase order.</p> <p>4 Q So this sentence that I just read made it sound like it's</p> <p>5 the local computer --</p> <p>6 THE COURT: Wait a minute now. You're not</p> <p>7 testifying.</p> <p>8 A I understand that. I understand how that reads, but it's</p> <p>9 a transaction -- purchase order build program initiates the</p> <p>10 purchase order program.</p> <p>11 Q Okay.</p> <p>12 A Which is on the host and builds on the host.</p> <p>13 Q So we're talking about the RIMS system now; correct?</p> <p>14 A Correct.</p> <p>15 Q The RIMS system includes both the local computer and a</p> <p>16 host computer; right?</p> <p>17 A The invention does say that, yes.</p> <p>18 Q So the RIMS system, as a whole, generates purchase orders;</p> <p>19 correct?</p> <p>20 MR. ROBERTSON: Object to the form of the question,</p> <p>21 Your Honor.</p> <p>22 THE COURT: What do you say?</p> <p>23 MR. McDONALD: I think it's a good form.</p> <p>24 THE COURT: You all really helped me with that one.</p> <p>25 MR. ROBERTSON: Well --</p>	<p>357</p> <p>1 Q In fact, if you turn to column six of the '989 patent,</p> <p>2 Exhibit 10, which is page 17 of Exhibit 10.</p> <p>3 A Column six?</p> <p>4 Q Yes.</p> <p>5 A What are the lines again?</p> <p>6 Q I haven't given lines yet. We have column six, page 17 of</p> <p>7 Exhibit 10. I want to help you get there first.</p> <p>8 A I got it.</p> <p>9 Q Okay. Then you see there there's a table that actually</p> <p>10 begins at the bottom of column five and continues at the top of</p> <p>11 column six; correct?</p> <p>12 A Correct.</p> <p>13 Q And the product types 01 and 02 are defined at the bottom</p> <p>14 of column five; correct?</p> <p>15 A Yes.</p> <p>16 Q And then the other product types, 03, 04, 05, and 06,</p> <p>17 they're all at the top of column six; right?</p> <p>18 A Yes.</p> <p>19 MR. McDONALD: Could you blow up the column six</p> <p>20 portion of that table, please.</p> <p>21 Q So it has those types 03 and 04 that we were just talking</p> <p>22 about; correct?</p> <p>23 A Yes.</p> <p>24 Q So 04, third-party item the distributor orders, that's</p> <p>25 what you were just talking about in terms of sourcing; correct?</p>

<p>366</p> <p>1 cross-reference back to a Fisher part number.</p> <p>2 Q So in that situation, it could be a part number from a</p> <p>3 third-party source that would then be converted to a Fisher</p> <p>4 part number?</p> <p>5 A No. I don't think we -- I don't think it could be third</p> <p>6 party. I'm not sure.</p> <p>7 Q How about we get back to the RIMS patent, Plaintiff's</p> <p>8 Exhibit 10, and can we turn to page 31 of Exhibit 10.</p> <p>9 Actually, let's go all the way to page 30, because there's a</p> <p>10 heading we can start with. Page 30 of the RIMS patent,</p> <p>11 Exhibit 10.</p> <p>12 MR. ROBERTSON: Mr. McDonald, you mean column three?</p> <p>13 MR. McDONALD: Page 30 of the document.</p> <p>14 A Column 31, 32?</p> <p>15 Q That's exactly right. At the bottom there, I just wanted</p> <p>16 to get the heading of this section here that begins at the</p> <p>17 bottom. The heading is cross-referencing; do you see that?</p> <p>18 A Yes, I do.</p> <p>19 Q So then there's a discussion of cross-referencing that</p> <p>20 goes on from, beginning at the bottom of column 31 of the RIMS</p> <p>21 patent; right?</p> <p>22 A Yes.</p> <p>23 Q So if we continue, that discussion of cross-referencing</p> <p>24 continues on to column 33 as well; right?</p> <p>25 A Yes. Yes. And 34.</p>	<p>368</p> <p>1 A Yes.</p> <p>2 Q Now, is it true -- I'd like to go to the issue now of just</p> <p>3 how the invention came about where you started from the RIMS</p> <p>4 system we've been talking about and got to the system described</p> <p>5 in the patents in this suit.</p> <p>6 Is it true that back in the 1992 time frame, you would,</p> <p>7 from time to time, visit installations that had the RIMS</p> <p>8 system?</p> <p>9 A That's correct.</p> <p>10 Q And at those installations, sometimes would you see that</p> <p>11 the computer operator operating the RIMS system would also have</p> <p>12 in their office or at their station a bookshelf of paper</p> <p>13 catalogs from other vendors?</p> <p>14 A By operator, you are speaking of Fisher customer service?</p> <p>15 Q Yes. The person sitting at the computer operating the</p> <p>16 RIMS system; right?</p> <p>17 A They would typically have a collection of catalogs.</p> <p>18 THE COURT: The installations that you are visiting,</p> <p>19 are they Fisher offices or some other place?</p> <p>20 THE WITNESS: These would be customer sites, customer</p> <p>21 sites where the RIMS system would be installed.</p> <p>22 THE COURT: Do you have a customer representative on</p> <p>23 site, Fisher employee that's running that system?</p> <p>24 THE WITNESS: That's correct.</p> <p>25 Q So in that situation, when you visited back in the '92</p>
<p>367</p> <p>1 Now, you see on column 33, there's a paragraph beginning</p> <p>2 at line 15.</p> <p>3 MR. McDONALD: Will you blow that paragraph up,</p> <p>4 please. It's on page 31.</p> <p>5 THE COURT: The next table?</p> <p>6 MR. McDONALD: Right.</p> <p>7 THE COURT: Host computer ten; is that what you are</p> <p>8 talking about?</p> <p>9 MR. McDONALD: Yes.</p> <p>10 Q Now, this is a section talking about that table that can</p> <p>11 match up the parts that are equivalents; right Mr. Momyer?</p> <p>12 A Yes.</p> <p>13 Q In that paragraph, it talks about -- down to about line</p> <p>14 30 --</p> <p>15 A Yes.</p> <p>16 Q -- there's a line representing a requisition for 1000250</p> <p>17 which is, in parentheses, Corning's part number for the beaker.</p> <p>18 A Yes.</p> <p>19 Q And it says, a match will be found in the vendor</p> <p>20 cross-reference file in host database 20, and that item</p> <p>21 converted --</p> <p>22 A To the Fisher number.</p> <p>23 Q Yes, to the Fisher number. So it starts as another</p> <p>24 vendor's number, and it's converted to the Fisher number; is</p> <p>25 that right?</p>	<p>369</p> <p>1 time frame, that user of the system, the representative, would</p> <p>2 have paper catalogs from other vendors?</p> <p>3 A Correct.</p> <p>4 Q These would be pretty big catalogs; right?</p> <p>5 A Yes.</p> <p>6 Q Did it come up at that point that people wanted to get</p> <p>7 those paper catalogs in an electronic form but also usable</p> <p>8 through the RIMS system?</p> <p>9 A I can't say that it did come up. It was something that --</p> <p>10 THE COURT: You are talking about in 1992? That's</p> <p>11 what you said. You started us off with whether he visited</p> <p>12 installations in 1992.</p> <p>13 MR. McDONALD: Right.</p> <p>14 THE COURT: In 1992, did people raise that with you?</p> <p>15 THE WITNESS: May have talked about it --</p> <p>16 THE COURT: If you remember, then say yes or no. If</p> <p>17 you don't remember --</p> <p>18 THE WITNESS: I don't remember. At this time, I</p> <p>19 don't remember having that conversation --</p> <p>20 THE COURT: All right.</p> <p>21 THE WITNESS: -- with customer service persons.</p> <p>22 Q Well, whether you actually talked to them or not, would</p> <p>23 you agree at least that one of the motivations for developing</p> <p>24 the system described in the patents-in-suit is that customers</p> <p>25 were asking Fisher to also manage inventory of products from</p>

<p>374</p> <p>1 capability.</p> <p>2 Q But could a text search a list of selected topics?</p> <p>3 A I guess I'm not sure what you mean by selected topics.</p> <p>4 Q Do you know what that means in the context of the TV/2</p> <p>5 system?</p> <p>6 A No.</p> <p>7 Q Would you agree at the time that you filed the patents</p> <p>8 involved in this suit there was known to be able to search a</p> <p>9 single catalog on a CD-ROM?</p> <p>10 THE COURT: That what was known?</p> <p>11 MR. McDONALD: That it was known in the field of</p> <p>12 purchasing and requisition systems to be able to search a</p> <p>13 single CD-ROM with a catalog on it.</p> <p>14 MR. ROBERTSON: Your Honor, again, this is outside</p> <p>15 the scope of my direct.</p> <p>16 THE COURT: I don't remember him asking anything</p> <p>17 about that on his direct, Mr. McDonald.</p> <p>18 MR. McDONALD: Fair enough. I'll withdraw it.</p> <p>19 Q Can we turn to the '683 patent now, Plaintiff's Exhibit 1,</p> <p>20 and turn to figure 1A which is the third page, I believe.</p> <p>21 A Okay.</p> <p>22 Q Now, on that picture, figure 1A, this is in the '683</p> <p>23 patent in this suit; right, Mr. Momyer?</p> <p>24 A Yes.</p> <p>25 Q You have shown here the catalog database number 36 kind of</p>	<p>376</p> <p>1 A Yes.</p> <p>2 Q So, again, there are even that list of Fisher products in</p> <p>3 the host database, you were showing it in your patent as not</p> <p>4 part of the catalog databases; right?</p> <p>5 A Yes.</p> <p>6 Q And the reason for is that is that catalog database had a</p> <p>7 different purpose and function than those other databases?</p> <p>8 A Yes. It was to -- yes. It would have had a different</p> <p>9 purpose and function.</p> <p>10 Q What would be the difference in purpose and function?</p> <p>11 A Well, one, it would allow you to place an order for a</p> <p>12 specific part. The catalog database in itself would not -- you</p> <p>13 could pull the information from the catalog. You can go and do</p> <p>14 validation of that part against both the local part master and</p> <p>15 then up against the host.</p> <p>16 Another benefit or purpose would be inventory control,</p> <p>17 inventory management. The product information at that level,</p> <p>18 that information wouldn't be in the catalog database but would</p> <p>19 be in the part master.</p> <p>20 Q Earlier you testified about some subset searching</p> <p>21 capability; do you recall that?</p> <p>22 A Yes.</p> <p>23 Q Is that something different from what the patents-in-suit</p> <p>24 describe when they talk about selecting catalogs to search, or</p> <p>25 is that the same thing?</p>
<p>375</p> <p>1 in the middle of the page there. Do you see that?</p> <p>2 A Yes.</p> <p>3 Q That was something that didn't exist in the RIMS system;</p> <p>4 right?</p> <p>5 A Correct.</p> <p>6 Q Now, what database did exist in the RIMS system was a</p> <p>7 parts master or item master; right?</p> <p>8 A As well as inventory tables. You are talking about the</p> <p>9 inventory database?</p> <p>10 Q Talking about the parts master.</p> <p>11 A There was a parts master.</p> <p>12 Q Which box was the parts master?</p> <p>13 A It would have been included in that grouping called</p> <p>14 inventory databases.</p> <p>15 Q So that's 42B up above?</p> <p>16 A Yes.</p> <p>17 Q So parts master was over there, and so it's -- certainly</p> <p>18 in your picture here, you were not depicting the parts master</p> <p>19 should be part of the catalog database; right?</p> <p>20 A Yes.</p> <p>21 Q And the Fisher product list, that was in the host</p> <p>22 database; correct?</p> <p>23 A Yes.</p> <p>24 Q And so would that be in this picture represented by what's</p> <p>25 in host databases box number 11 in the upper right corner?</p>	<p>377</p> <p>1 MR. ROBERTSON: Your Honor, we're getting into the</p> <p>2 Court's claim construction here, so I object as calling for a</p> <p>3 legal opinion.</p> <p>4 MR. McDONALD: Maybe I can tie it specifically to an</p> <p>5 embodiment in the patent, Your Honor, and avoid that issue.</p> <p>6 THE COURT: All right.</p> <p>7 MR. McDONALD: Give me a moment, please.</p> <p>8 Q Mr. Momyer, can you turn in the '683 patent to column</p> <p>9 nine. If you look at the bottom part of column nine beginning</p> <p>10 at about line 52.</p> <p>11 THE COURT: When multiple catalogs?</p> <p>12 MR. McDONALD: Yes.</p> <p>13 THE COURT: Where are you going, how far down?</p> <p>14 MR. McDONALD: Basically to the end of that column.</p> <p>15 We might have to continue up to ten, but I think we can cover</p> <p>16 it with what's at the bottom of column nine.</p> <p>17 Q So do you have that again, Mr. Momyer? Bigger print on</p> <p>18 the screen there if that helps you.</p> <p>19 A Thank you. Yes, I do. I have it.</p> <p>20 Q This part of your patent, the '683 patent, talks about an</p> <p>21 option where when multiple catalogs are in the catalog</p> <p>22 database, there's a function that allows for selecting catalogs</p> <p>23 to be searched; right?</p> <p>24 A Yes.</p> <p>25 Q So the idea here is you don't have to select all the</p>

<p>378</p> <p>1 catalogs?</p> <p>2 A That's correct.</p> <p>3 Q Is this something that's different from that search within</p> <p>4 a search that you said you were working on with IBM?</p> <p>5 A I'm not certain. I'd refer that to Mr. Kinross.</p> <p>6 Q You don't know one way or the other?</p> <p>7 A Yeah. I think I can't give you a good answer on that.</p> <p>8 Q But at least you understand the idea here is that these</p> <p>9 are pretty big catalogs, and it might streamline the search if</p> <p>10 you can, in effect, eliminate some of the catalogs; right?</p> <p>11 A Yes.</p> <p>12 Q I'd like to turn finally now to that RIMS brochure,</p> <p>13 Defendant's Exhibit 61.</p> <p>14 THE CLERK: Defendant's 61?</p> <p>15 MR. McDONALD: Yes.</p> <p>16 Q Mr. Momyer, I think you said you had seen this brochure</p> <p>17 before. Can you tell me the circumstances which you had seen</p> <p>18 it?</p> <p>19 A I saw it on several occasions. I know it was developed by</p> <p>20 our internal IT organization, and it was developed to be handed</p> <p>21 out at trade shows to -- as well as to give information to our</p> <p>22 customers on the high level feature of RIMS and what it could</p> <p>23 do for the customer.</p> <p>24 Q Was it, in fact, distributed?</p> <p>25 A I believe it was. I'm not -- don't know for a fact at</p>	<p>380</p> <p>1 Q If you turn to page four of Defendant's Exhibit 61.</p> <p>2 A Yeah.</p> <p>3 Q You pointed some things out yesterday, I believe, that</p> <p>4 were inaccurate, and I just want to clarify here that under</p> <p>5 requisition management features, if we can blow up the left</p> <p>6 column there with the side bullet points, please.</p> <p>7 THE COURT: On page 0598; is that what you are</p> <p>8 talking about?</p> <p>9 MR. McDONALD: Yes, Your Honor.</p> <p>10 Q Of these five bullet points, yesterday, I believe it was</p> <p>11 numbers three and four that you said weren't accurate in whole</p> <p>12 or in part; is that fair?</p> <p>13 A Yeah, just to kind of redo that, the bullet point three,</p> <p>14 as I said, we did develop some interfaces, but they weren't a</p> <p>15 significant number of interfaces. There were a couple of</p> <p>16 interfaces we developed, and the second one, bullet point 4,</p> <p>17 was -- to the best of my knowledge, we never developed a remote</p> <p>18 requisitioning thing. You could follow that up and ask Jim</p> <p>19 Johnson later, but I don't recall us doing any of that.</p> <p>20 Q But the company distributed this with respect to</p> <p>21 interfacing, though, because even though you didn't technically</p> <p>22 have already built an interface with, quote, all types of</p> <p>23 purchasing systems, did you think it was reasonable to convey</p> <p>24 that you could?</p> <p>25 A I think if we had done it, we would have had to develop a</p>
<p>379</p> <p>1 that point, but I believe it was.</p> <p>2 Q I think you referred to IT?</p> <p>3 A Information technology. That's the software development</p> <p>4 group.</p> <p>5 Q Are those the people that were actually the ones that had</p> <p>6 worked on developing the RIMS system?</p> <p>7 A It would have been a different group within the IT</p> <p>8 organization. It would have been like the documentation group,</p> <p>9 the group that was develop documentation, doing training.</p> <p>10 Q Is it your understanding that this brochure was developed</p> <p>11 in conjunction with people who knew what RIMS did?</p> <p>12 A Yes.</p> <p>13 Q And did you ever tell anybody that there was anything in</p> <p>14 this brochure that you thought was inaccurate?</p> <p>15 A Yes.</p> <p>16 Q When did you do that?</p> <p>17 A I think -- what was put out was -- everything that was on</p> <p>18 the brochure at the time we intended to do, and some things</p> <p>19 didn't occur. Many of the things were developed, but, yes, I</p> <p>20 did tell them, and we went ahead and put the product out in</p> <p>21 anticipation of getting to -- getting these things done.</p> <p>22 THE COURT: Are you saying there's some things in</p> <p>23 this brochure that are wrong?</p> <p>24 THE WITNESS: Yeah. I pointed a couple of those</p> <p>25 things out.</p>	<p>381</p> <p>1 customized interface.</p> <p>2 Q It was something you knew you could do?</p> <p>3 A Yes.</p> <p>4 Q One of the things you didn't say was wrong was that first</p> <p>5 bullet point that says consolidates all supplier activity</p> <p>6 including third-party and administrative purchases; right?</p> <p>7 A That's correct.</p> <p>8 Q Now, if we go two more pages to page six --</p> <p>9 MR. McDONALD: Now, if you could blow up the image</p> <p>10 below the big black box there where it says a system that's</p> <p>11 easy to use and then the paragraph right to the right of that,</p> <p>12 please.</p> <p>13 Q Now, in this part of this RIMS brochure, I'll give you a</p> <p>14 chance to look at it. Isn't it true that the brochure</p> <p>15 indicated that customers of the RIMS system now could either</p> <p>16 use a customer service representative or they could enter</p> <p>17 requisitions or purchase orders remotely through the people in</p> <p>18 their organization who would be using the product?</p> <p>19 A I see that.</p> <p>20 Q The computer system itself, it doesn't actually know who</p> <p>21 is sitting at the keyboard; right? That could be anybody.</p> <p>22 A Well, other than the fact -- it couldn't be anybody. It</p> <p>23 would have to be someone who would have had a password and a</p> <p>24 log-in ID to log in.</p> <p>25 Q But that could be an employee of the customer as well as</p>

<p>390</p> <p>1 A I don't think -- oh, today. I think someone else</p> <p>2 brought it. I didn't bring it directly to your</p> <p>3 attention.</p> <p>4 Q And do you know whether or not it was the</p> <p>5 stenographer from Merchant & Gould that was present to</p> <p>6 record your deposition?</p> <p>7 A No.</p> <p>8 THE COURT: You mean they had their own court</p> <p>9 reporter?</p> <p>10 MR. ROBERTSON: Well, the one they had</p> <p>11 retained, Your Honor.</p> <p>12 THE COURT: Well, that's an independent</p> <p>13 person they retained. It's not somebody who works for</p> <p>14 them.</p> <p>15 MR. ROBERTSON: I understand.</p> <p>16 BY MR. ROBERTSON:</p> <p>17 Q What's the difference between a search in the RIMS</p> <p>18 system, which I understood you to say was a lookup,</p> <p>19 and a search in the electronic sourcing system that is</p> <p>20 the subject of the patents that are at issue here?</p> <p>21 A Well, there's a significant difference. The</p> <p>22 search in RIMS system is a word-for-word exact match</p> <p>23 or it is a character-for-character match, and if any</p> <p>24 of that is not present, it fails the match and it</p> <p>25 isn't found.</p>	<p>392</p> <p>1 Q I'd like you to go and look at table 1 in</p> <p>2 Plaintiff's Exhibit No. 10, which is this '989 patent</p> <p>3 which you're the inventor, and there were a number of</p> <p>4 product types there. And you testified about product</p> <p>5 types 5 and 6.</p> <p>6 Let me direct you to column 11 of the '989 patent</p> <p>7 starting at about line 25 down to about line 31 under</p> <p>8 the heading "sourcing." Actually, let me apologize.</p> <p>9 Let's just go back and identify what product types 05</p> <p>10 and 06 are in table 1 in column 6.</p> <p>11 A Do you want me to --</p> <p>12 Q Yeah, if you would just read it for the jury,</p> <p>13 please?</p> <p>14 A Product type 05, third-party item which CSR or</p> <p>15 customer orders. Product type 06, customer-owned item</p> <p>16 located in customer warehouse at or next customer</p> <p>17 site.</p> <p>18 Q And you referred us to column 11 in the '989</p> <p>19 patent beginning at about line 14 about product type</p> <p>20 05?</p> <p>21 A Yes.</p> <p>22 Q Now, I'd like to direct you back down to this</p> <p>23 column with the heading that says "sourcing." Can you</p> <p>24 read that to the jury, sir?</p> <p>25 A The whole --</p>
<p>391</p> <p>1 A search in the catalog is more of a text search</p> <p>2 that searches for -- it's really based upon the</p> <p>3 criteria that you give as the search criteria.</p> <p>4 MR. McDONALD: I object to this because I</p> <p>5 think we're getting into this issue of search under</p> <p>6 the claims and catalog under the claims.</p> <p>7 THE COURT: Well, search has been construed.</p> <p>8 MR. ROBERTSON: No, it's not, Your Honor.</p> <p>9 THE COURT: Just a minute. Means for</p> <p>10 searching is in the '683, Claim Three, and '172, Claim</p> <p>11 One, is that what you're asking about?</p> <p>12 MR. ROBERTSON: No, sir. Mr. McDonald asked</p> <p>13 if the search in the RIMS patent was the same as the</p> <p>14 search in the electronic sourcing patent. The witness</p> <p>15 said there's a difference, but he wasn't permitted to</p> <p>16 say that the difference is. I'm just asking him what</p> <p>17 is the difference.</p> <p>18 MR. McDONALD: I don't believe I was given a</p> <p>19 chance to ask that question.</p> <p>20 MR. ROBERTSON: Let me ask it another way,</p> <p>21 Your Honor.</p> <p>22 THE COURT: Yes, I think you should.</p> <p>23 BY MR. ROBERTSON:</p> <p>24 Q Did the RIMS system include a search program?</p> <p>25 A No, it did not.</p>	<p>393</p> <p>1 Q Yes. The first paragraph. I'm sorry. From line</p> <p>2 26 to looks to be about 31.</p> <p>3 A After all of the items for a requisition have been</p> <p>4 entered, the next step is that of sourcing the</p> <p>5 requisition. Sourcing the requisition is the process</p> <p>6 of determining what inventory will be used to fill the</p> <p>7 requisition. Pricing is also performed in this step</p> <p>8 when it's called for. Example, except for all product</p> <p>9 types -- for all product types except for 05 and 06.</p> <p>10 Q Except for 05 and 06. Is that consistent or</p> <p>11 inconsistent with what you told Mr. McDonald?</p> <p>12 A I don't remember what I told Mr. McDonald.</p> <p>13 Q That's a fair question. Is it consistent with</p> <p>14 your understanding as to how product types 05 and 06,</p> <p>15 the sourcing could happen except for those two -- let</p> <p>16 me rephrase that. That was a horrible question. Is</p> <p>17 this section that you read consistent with your</p> <p>18 understanding as to how the RIMS system operated?</p> <p>19 A Yes.</p> <p>20 Q Let me direct you to column 18 of the '989 patent</p> <p>21 in Plaintiff's Exhibit No. 10 starting at about line</p> <p>22 51 and going down to line 54. And if you could read</p> <p>23 that, please, for the jury.</p> <p>24 A After the purchase order data block is described</p> <p>25 in step 338 is transmitted to host computer over the</p>

<p>394</p> <p>1 data link described above local computer 40 waits for</p> <p>2 a response from the host as shown in block 340.</p> <p>3 Q What if anything does that have to do with</p> <p>4 generating P.O. orders, if anything?</p> <p>5 A Well, that's the process that RIMS was using to</p> <p>6 transmit information to the host to the build the</p> <p>7 P.O.s. So all of the items that were on a requisition</p> <p>8 would have been put in a data block along with the</p> <p>9 affinity of the customer and passed up to the host</p> <p>10 computer, which would then proceed to build a purchase</p> <p>11 order.</p> <p>12 Q Was it your understanding that the RIMS system</p> <p>13 operated by having the host generate the purchase</p> <p>14 order?</p> <p>15 A Yes.</p> <p>16 Q Can you go to column 31?</p> <p>17 THE COURT: Why don't you stop a minute.</p> <p>18 While we're here, pull the thing up. You see these</p> <p>19 after the purchase order data block described in step,</p> <p>20 and then there's a number 338, and is transmitted to</p> <p>21 host computer, and then there is the number 10, and it</p> <p>22 continues, and there are numbers interspersed there.</p> <p>23 What those numbers are references back to a particular</p> <p>24 figure that are being talked about. In this instance</p> <p>25 there are references back to figure 8. And it is a</p>	<p>396</p> <p>1 cross-referencing, I think you informed us that that</p> <p>2 section goes over to actually the bottom of column 34;</p> <p>3 is that right?</p> <p>4 A Yes.</p> <p>5 Q Could the RIMS system use a cross-reference table</p> <p>6 to take a requisition item say from a Fisher product</p> <p>7 to identify a similar item from another vendor that</p> <p>8 could then requisition from that vendor?</p> <p>9 A No.</p> <p>10 MR. ROBERTSON: Thank you. I have no further</p> <p>11 questions. Actually, I'm sorry. I misspoke. One</p> <p>12 last question.</p> <p>13 Q If I can take you to the '683 patent, figure 1A.</p> <p>14 You were asked some questions about figure 1A and</p> <p>15 figure 1B, do you recall that?</p> <p>16 A Yes.</p> <p>17 Q Are these two different embodiments that were</p> <p>18 disclosed in your patent?</p> <p>19 A Yes.</p> <p>20 Q Is your invention confined to either to figure 1A?</p> <p>21 MR. McDONALD: Objection, Your Honor. This</p> <p>22 goes to his understanding of the scope of the claims.</p> <p>23 MR. ROBERTSON: He was asked about figure 1A.</p> <p>24 I'm just asking if this is an embodiment. I didn't</p> <p>25 ask him anything about a claim.</p>
<p>395</p> <p>1 way to say the data block is described in step 338 if</p> <p>2 you go back and look at the figure 5A, and it says a</p> <p>3 host computer is -- has got those lines to it and has</p> <p>4 the number 10 if you go back and look at figure 5A.</p> <p>5 So all of those numbers when you are reading them, if</p> <p>6 you want to cross-reference back to the drawings, you</p> <p>7 can do that, but if you just want to read them, you</p> <p>8 just don't read -- you just don't pay any attention to</p> <p>9 the numbers unless you're going back to check them.</p> <p>10 Is that a fair statement?</p> <p>11 MR. ROBERTSON: Yes. And thank you for that,</p> <p>12 Your Honor.</p> <p>13 THE COURT: Excuse me. Go ahead.</p> <p>14 BY MR. ROBERTSON:</p> <p>15 Q The figure 5A that's referenced here you were</p> <p>16 asked about on cross-examination, correct?</p> <p>17 A 5A?</p> <p>18 Q Yes. If you want to go to it, it's at page 11 of</p> <p>19 42 in the patent and it ends with Bates No. 904. I</p> <p>20 think it was characterized as a flow chart?</p> <p>21 A Yes, I have it.</p> <p>22 Q So that section that we were just reading from is</p> <p>23 referencing that figure; is that right?</p> <p>24 A Yes.</p> <p>25 Q Now, on to column 31. On this topic of</p>	<p>397</p> <p>1 THE COURT: Yes, you are.</p> <p>2 MR. ROBERTSON: I'm just asking if this is an</p> <p>3 embodiment of his invention.</p> <p>4 THE COURT: These two.</p> <p>5 MR. ROBERTSON: Well --</p> <p>6 THE COURT: It's two different embodiments.</p> <p>7 BY MR. ROBERTSON:</p> <p>8 Q Let me start with figure 1A. Is figure 1A one</p> <p>9 embodiment of your invention?</p> <p>10 A Yes.</p> <p>11 Q Is figure 1B another embodiment of your invention?</p> <p>12 A Yes.</p> <p>13 Q Are these merely preferred embodiments?</p> <p>14 A Yes.</p> <p>15 Q Do you have an understanding whether or not your</p> <p>16 inventions are confined to either of those</p> <p>17 embodiments. Do you have an understanding?</p> <p>18 A Yes.</p> <p>19 MR. McDONALD: Objection, Your Honor.</p> <p>20 THE COURT: Overruled.</p> <p>21 Q What's your understanding?</p> <p>22 A My understanding is there are other embodiments.</p> <p>23 MR. ROBERTSON: Thank you.</p> <p>24 THE COURT: All right. You're going to be</p> <p>25 required, Mr. Momyer, to come back here and testify</p>

<p>402</p> <p>1 briefly, sir?</p> <p>2 A Well, the first thing I did was convert some of</p> <p>3 their systems to CICS. One was a cash application</p> <p>4 system that was used in accounting for paying bills.</p> <p>5 Another was an order entry system that interacted with</p> <p>6 customer service representatives to take orders over</p> <p>7 the phone.</p> <p>8 Q What is your educational background?</p> <p>9 A I have a bachelor's degree from the University of</p> <p>10 Pittsburgh, major economics, with a minor in computer</p> <p>11 science.</p> <p>12 Q When did you receive those degrees, sir?</p> <p>13 A In 1974.</p> <p>14 Q Since 1974 until your retirement, have you been</p> <p>15 spending your entire professional career in the</p> <p>16 computer field?</p> <p>17 A Yes.</p> <p>18 Q You were involved, as I said, in this electronic</p> <p>19 sourcing invention. Were you also involved in a</p> <p>20 project working with IBM during that period of time?</p> <p>21 A Yes.</p> <p>22 Q Mr. Momyer testified sort of the overview of what</p> <p>23 was involved with respect to that, but did you have</p> <p>24 personal contact with the IBM people?</p> <p>25 A Yes.</p>	<p>404</p> <p>1 A Yes.</p> <p>2 Q Were you involved in that, sir?</p> <p>3 A Yes, I was.</p> <p>4 Q We'll talk about some of those modifications or</p> <p>5 changes that needed to happen in a minute, but at a</p> <p>6 high level can you us tell us, if you can give me a</p> <p>7 list, say, of some of the things that needed to happen</p> <p>8 with this TV/2 program that you were personally</p> <p>9 involved in?</p> <p>10 A Well, the first was the ability to have multiple</p> <p>11 catalogs in the system. We felt that was a very</p> <p>12 unique requirement that we had that would enable the</p> <p>13 end user to select and deselect catalogs to be</p> <p>14 searched.</p> <p>15 Q Can we just run through the list first maybe of</p> <p>16 everything you might recall that needed to be modified</p> <p>17 with respect to TV/2, then we'll come back and go at</p> <p>18 it in a little greater detail?</p> <p>19 A The catalogs, there was a footer bar that we</p> <p>20 needed to provide for easy navigation through the</p> <p>21 system. Among the features of the footer bar were</p> <p>22 creating an order list and being able to view the</p> <p>23 order list, being able to accept the order.</p> <p>24 We also needed specialized search functions that</p> <p>25 would customize the search for electronic commerce,</p>
<p>403</p> <p>1 Q Are you familiar with a program known as TV/2?</p> <p>2 A Yes.</p> <p>3 Q Did you have any role in identifying TV/2 as a</p> <p>4 potential program that could be used in the protocol</p> <p>5 type development of the inventions that resulted in</p> <p>6 the patents that you have been awarded?</p> <p>7 A Yes.</p> <p>8 Q What did you do, sir?</p> <p>9 A I was charged with researching programs that were</p> <p>10 essentially search engines for documents. Fisher had</p> <p>11 a large catalog and the industry was tending to put</p> <p>12 catalogs on CD ROMS, and we wanted to have entry in</p> <p>13 that field. So I researched a number of search</p> <p>14 programs. Bard being one of them. SteBo being one</p> <p>15 other. Millennium Software and Prism being others</p> <p>16 that we looked at.</p> <p>17 Q Did you ultimately come to the decision along with</p> <p>18 the other team members that the IBM TV/2 search</p> <p>19 program might be most suited for adapting to your</p> <p>20 inventions?</p> <p>21 A Yes, we did.</p> <p>22 Q Can you tell me just generally did the IBM TV/2</p> <p>23 search program need to be modified, revised,</p> <p>24 reprogrammed or have aspects of it created from</p> <p>25 scratch in any way?</p>	<p>405</p> <p>1 basically. That being search by part number, search</p> <p>2 by keyword with Boolean logic including "and" and</p> <p>3 "ors" so that you wouldn't get unnecessary results in</p> <p>4 the hit list that would be created by the search.</p> <p>5 Q Let me just stop you there because you used a</p> <p>6 couple of teams. I want to make sure I understand</p> <p>7 what you were referring to. You said search by</p> <p>8 keyword. What did you mean by "keyword."</p> <p>9 MR. McDONALD: Your Honor, I'm going to</p> <p>10 object. I don't think this is really tied to the</p> <p>11 infringement issue or the claims of the patent at this</p> <p>12 point.</p> <p>13 MR. ROBERTSON: Your Honor, I'm just asking</p> <p>14 the witness what modifications need to be made to</p> <p>15 TV/2. What did he do in order to create the</p> <p>16 invention. I'm not asking him at all about claim</p> <p>17 constructions. I haven't raised a single claim term</p> <p>18 yet.</p> <p>19 THE COURT: He didn't say that. He said it</p> <p>20 didn't have anything to do with infringement. It's</p> <p>21 not relevant is his objection, I think. Isn't that</p> <p>22 your objection?</p> <p>23 MR. McDONALD: That's correct, Your Honor.</p> <p>24 THE COURT: Why is it relevant?</p> <p>25 MR. ROBERTSON: It's relevant, Your Honor, to</p>

<p>406</p> <p>1 the scope of the claims as to what the inventors</p> <p>2 invented and when they invented it, just as Mr. Momyer</p> <p>3 testified this morning.</p> <p>4 THE COURT: The fact that he testified to it</p> <p>5 doesn't make it relevant. It wasn't objected to in</p> <p>6 that testimony and I didn't have an opportunity to</p> <p>7 address that. Now I do. You're asking him to explain</p> <p>8 terms within the term "specialized search function"</p> <p>9 that he did. Is this what you're talking about?</p> <p>10 MR. ROBERTSON: I'm asking him to explain how</p> <p>11 TV/2 needed to be modified in order to be able to</p> <p>12 provide the functionality of the invention, Your</p> <p>13 Honor.</p> <p>14 THE COURT: How about this particular comment</p> <p>15 about specialized search?</p> <p>16 MR. ROBERTSON: Well, I can rephrase that</p> <p>17 question.</p> <p>18 THE COURT: I'm just asking you. I'm trying</p> <p>19 to figure out what it is first. You're talking about</p> <p>20 a specialized search function of some kind?</p> <p>21 THE WITNESS: Yes.</p> <p>22 THE COURT: Objection overruled.</p> <p>23 BY MR. ROBERTSON:</p> <p>24 Q What did you mean by that, sir?</p> <p>25 A What did I mean by "specialized search function"?</p>	<p>408</p> <p>1 recreate parts of it in order to come to the invention</p> <p>2 reflected in the patent?</p> <p>3 MR. ROBERTSON: No, Your Honor. Thank you.</p> <p>4 THE COURT: Then go on back to that list.</p> <p>5 MR. ROBERTSON: Thank you, sir.</p> <p>6 BY MR. ROBERTSON:</p> <p>7 Q Did you also have anything to do with creating a</p> <p>8 catalog database?</p> <p>9 A Yes.</p> <p>10 Q Now, Fisher-Scientific -- well, let me complete</p> <p>11 the list. Your Honor is exactly right.</p> <p>12 Did you also have anything to do with the ability</p> <p>13 to search product catalogs?</p> <p>14 A Yes.</p> <p>15 Q Well, do you recall you mentioned this need to</p> <p>16 create a footer bar; is that right?</p> <p>17 A Correct.</p> <p>18 Q Did you have anything to do with creating what's</p> <p>19 known as a shell program that's disclosed in your</p> <p>20 invention?</p> <p>21 A Yes.</p> <p>22 Q Did the TV/2 program need to be modified in order</p> <p>23 to create order lists within a shell?</p> <p>24 A Yes.</p> <p>25 Q Did you have anything to do with modifying the</p>
<p>407</p> <p>1 Q I don't know if you completed your answer. I</p> <p>2 was asking you about --</p> <p>3 THE COURT: You asked him. It got</p> <p>4 interrupted, but the objection was to what keyword</p> <p>5 meant. So that objection is overruled.</p> <p>6 What does "keyword" mean?</p> <p>7 THE WITNESS: Keyword is any word that would</p> <p>8 be found in the document. So you're basically saying</p> <p>9 "find ovens" and the search would go out and find</p> <p>10 everywhere there was an occurrence of ovens in the</p> <p>11 document.</p> <p>12 Q Is that an Aspect of your invention?</p> <p>13 A Yes.</p> <p>14 Q Was TV/2 able to do that when you first met with</p> <p>15 IBM?</p> <p>16 A Technical Viewer was able to do a search, a</p> <p>17 keyword search. It's the other searches that were for</p> <p>18 specific items like part number, vendor, bulletins,</p> <p>19 page number that Technical Viewer wasn't able to do.</p> <p>20 Q One of the things you mentioned was that there</p> <p>21 were ways you needed to develop multiple catalogs in</p> <p>22 TV/2, do you recall that?</p> <p>23 A Yes.</p> <p>24 THE COURT: Are we now finished with the list</p> <p>25 of things that he did to change TV/2 or modify it or</p>	<p>409</p> <p>1 TV/2 to create interfaces to update catalogs in EDI</p> <p>2 transactions?</p> <p>3 A Yes.</p> <p>4 Q Let's start with that are last one first. What's</p> <p>5 an EDI transaction?</p> <p>6 A EDI stands for electronic data interchange.</p> <p>7 Q What does that mean?</p> <p>8 A It's a way to interact with separate companies</p> <p>9 without human intervention. It's computer-to-computer</p> <p>10 interactions that operate on a standard which is set</p> <p>11 by the X12 Committee, which is a United States</p> <p>12 standards setting body.</p> <p>13 Q Do they have to have a common language to talk to</p> <p>14 each other?</p> <p>15 A Well, they called it common transaction sets,</p> <p>16 which could be viewed as a language, but it's more of</p> <p>17 a structure that enables computers to understand</p> <p>18 messages between companies.</p> <p>19 Q So they can communicate data?</p> <p>20 A Yes.</p> <p>21 Q Were you involved in assisting to modify the TV/2</p> <p>22 program with respect to that?</p> <p>23 A We wrote programs that would take the EDI</p> <p>24 transaction, the price/sales catalog, and update</p> <p>25 vendors' catalogs based on information provided in</p>

<p style="text-align: right;">410</p> <p>1 those transaction sets.</p> <p>2 Q When you say "we," who are you referring to?</p> <p>3 A Me and my staff.</p> <p>4 Q I mentioned this need to customize TV/2 to create</p> <p>5 order lists in the shell. What's a shell?</p> <p>6 A The shell was a program that used Technical Viewer</p> <p>7 API to change how Technical Viewer functioned.</p> <p>8 Q You used the term API. What's an "API"?</p> <p>9 A API stands for Application Programming Interface.</p> <p>10 It is a series of commands used to effect how a piece</p> <p>11 of software will operate.</p> <p>12 Q So the Technical Viewer 2 had this API interface</p> <p>13 you're referring to. Could it communicate in the</p> <p>14 context of your invention with this shell program you</p> <p>15 had without modification?</p> <p>16 A The API was used in the shell program to effect</p> <p>17 changes in Technical Viewer.</p> <p>18 Q So you had to develop the shell program in order</p> <p>19 to communicate to TV/2?</p> <p>20 A Yes.</p> <p>21 Q And who had primary responsibility for that shell</p> <p>22 program?</p> <p>23 A The primary responsibility for documenting the</p> <p>24 requirements of the shell program were mine as far as</p> <p>25 the functionality concerned. The actual programming</p>	<p style="text-align: right;">412</p> <p>1 invention?</p> <p>2 A Correct.</p> <p>3 Q Now, you mentioned also this catalog database. Do</p> <p>4 you recall that?</p> <p>5 A Yes.</p> <p>6 Q Fisher-Scientific had a very large paper catalog.</p> <p>7 A Yes, they did. It was at least 2000 pages.</p> <p>8 Q With tens of thousands of items offered by various</p> <p>9 vendors that Fisher distributed?</p> <p>10 A Correct.</p> <p>11 Q It also included Fisher products, correct?</p> <p>12 A It did, yes.</p> <p>13 Q Were you asked to provide that paper catalog to</p> <p>14 IBM so they could adapt it into a catalog database?</p> <p>15 A Well, it was more than that. We were asked to</p> <p>16 provide the catalog in an electronic format to help</p> <p>17 them in creating the catalog database.</p> <p>18 Q So just so I'm clear, did you have a</p> <p>19 responsibility for giving an electronic catalog of</p> <p>20 Fisher-Scientific, not a paper catalog that would then</p> <p>21 need to be scanned and included into it? Was that</p> <p>22 part of your responsibility?</p> <p>23 A Yes. It was an electronic version of the paper</p> <p>24 catalog, and it was used by SteBo to actually create</p> <p>25 pages of the paper catalog.</p>
<p style="text-align: right;">411</p> <p>1 of the shell was an IBM responsibility.</p> <p>2 Q You also indicated that you needed to create this</p> <p>3 footer bar to work within the shell. Do you recall</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q Tell us the purpose of the footer bar within the</p> <p>7 shell program?</p> <p>8 A The footer bar --</p> <p>9 MR. McDONALD: It's irrelevant, Your Honor.</p> <p>10 The footer bar isn't at issue in this case.</p> <p>11 THE COURT: Is it?</p> <p>12 MR. ROBERTSON: Yes, it is, Your Honor. It</p> <p>13 has functionality in the system that you're going to</p> <p>14 hear from experts about that demonstrate infringement.</p> <p>15 THE COURT: Overruled.</p> <p>16 BY MR. ROBERTSON:</p> <p>17 Q What's the purpose of the footer bar?</p> <p>18 A The footer bar was a series of icons at the bottom</p> <p>19 of a screen that would assist the end user in</p> <p>20 navigating through the system with ease. It consisted</p> <p>21 of a catalog selection button, an order list button, a</p> <p>22 forward and backward button, a cancel button, and a</p> <p>23 help button.</p> <p>24 Q It was a way to navigate through the program when</p> <p>25 you were performing the functionality of your</p>	<p style="text-align: right;">413</p> <p>1 THE COURT: You used SteBo to prepare the</p> <p>2 pages or you said "used by SteBo." How did you take</p> <p>3 the paper catalog and convert it into an electronic</p> <p>4 version that you ultimately gave to IBM?</p> <p>5 THE WITNESS: Okay. We had a creative</p> <p>6 services department within Fisher who was responsible</p> <p>7 for creating the paper catalog. And what they would</p> <p>8 do is take paper in the way they wanted the catalog to</p> <p>9 look and send it to SteBo. SteBo would input that</p> <p>10 into their system in an electronic format to create</p> <p>11 pages that could be sent to the publisher.</p> <p>12 In the process of that, SteBo now had this</p> <p>13 catalog in electronic format, and we used that to give</p> <p>14 to IBM to produce the catalog database.</p> <p>15 Q So IBM didn't have a paper catalog. They had an</p> <p>16 electronic catalog from one of your vendors, SteBo,</p> <p>17 which you produced to them in order for them to</p> <p>18 utilize it in this electronic sourcing project that</p> <p>19 you were working on with them as a subcontractor; is</p> <p>20 that right?</p> <p>21 A Correct.</p> <p>22 Q Did they ever receive a paper catalog?</p> <p>23 A Yes.</p> <p>24 Q Were they having difficulties with converting it?</p> <p>25 A I wouldn't categorize it as difficulty. It was</p>

<p>414</p> <p>1 generally agreed that an electronic format was</p> <p>2 preferable because SteBo used a tagging language to</p> <p>3 describe the catalog. Technical Viewer used a tagging</p> <p>4 language to describe its pages. And I was able to get</p> <p>5 the definition of the tags from SteBo and provide it</p> <p>6 to IBM so that they could basically write a program to</p> <p>7 take the tags that were in the SteBo catalog and</p> <p>8 convert them to the IBM Technical Viewer format.</p> <p>9 Q What were these tags used for?</p> <p>10 A Tags in both systems were essentially used to</p> <p>11 describe how the data should look.</p> <p>12 Q Did the tags need to be modified in order to</p> <p>13 recognize and understand the electronic SteBo catalog</p> <p>14 that you provided to IBM?</p> <p>15 A Well, it was more like a one for one substitution</p> <p>16 of tags. So a tag, for instance, that said "bold" in</p> <p>17 SteBo might be "BL," and in Technical Viewer it might</p> <p>18 be "BD." So you had to substitute "BL" for "BD."</p> <p>19 Q So you had to reconcile those?</p> <p>20 A Yes.</p> <p>21 Q Let me ask you, you have had an opportunity to</p> <p>22 look at the statement of work with IBM; is that right?</p> <p>23 A Correct.</p> <p>24 Q I want to go to an attachment to that statement of</p> <p>25 work. If you would turn, please, sir, in your</p>	<p>416</p> <p>1 you associated with it that you and the inventors and</p> <p>2 the IBM people refer to it as? Are you familiar with</p> <p>3 the term Gantt chart?</p> <p>4 A Yes, Gantt chart.</p> <p>5 Q Did you refer to this?</p> <p>6 A This would be a Gantt chart, yes.</p> <p>7 Q What's your understanding of what a Gantt chart</p> <p>8 is? I believe it's G-A-N-T-T.</p> <p>9 A It's a chart showing the tasks that are required</p> <p>10 for some development and the length of time that those</p> <p>11 tasks would take. Also the dependencies of the task.</p> <p>12 Typically, the ones that are first are required before</p> <p>13 you can complete the others.</p> <p>14 Q And I just want to make sure we understand. I'd</p> <p>15 like you to orient us with this document, if we could.</p> <p>16 So let me ask you some questions about its</p> <p>17 organization.</p> <p>18 First, there's several headings. Do you see that</p> <p>19 at the very top?</p> <p>20 A The legend?</p> <p>21 Q Yes. It says IV and SOW?</p> <p>22 A Yes.</p> <p>23 Q SOW you understood to be statement of work?</p> <p>24 A Yes.</p> <p>25 Q Then there's a task name, correct?</p>
<p>415</p> <p>1 notebook, if you have it there, Plaintiff's Exhibit</p> <p>2 No. 38.</p> <p>3 A Under DX?</p> <p>4 Q I'm sorry. It should be under PX-38. do you have</p> <p>5 that.</p> <p>6 THE COURT: There is no PX-38. There's DX-1,</p> <p>7 DX-107, DX-230, DX-111, and DX-30. That's all there</p> <p>8 is in this notebook.</p> <p>9 Hand that big book up there, please. What is</p> <p>10 it in? Is it in Momyer's notebook?</p> <p>11 MR. ROBERTSON: Yes, sir.</p> <p>12 THE COURT: We've got it. Don't be doing</p> <p>13 that. Get back there.</p> <p>14 Turn to PX-38 there, would you, please?</p> <p>15 THE WITNESS: Okay.</p> <p>16 THE COURT: PX what?</p> <p>17 MR. ROBERTSON: PX-38.</p> <p>18 THE COURT: All right. Thank you.</p> <p>19 BY MR. ROBERTSON:</p> <p>20 Q If I could refer you to the back of that document,</p> <p>21 there is a Bates number that ends 4053. It's entitled</p> <p>22 "Fisher IBM Master Schedule Plan." Do you recall</p> <p>23 that?</p> <p>24 A Yes.</p> <p>25 Q Did this master schedule plan have any name that</p>	<p>417</p> <p>1 A Correct.</p> <p>2 Q And then there's a heading for the purpose of the</p> <p>3 task; is that right?</p> <p>4 A Correct.</p> <p>5 Q And then there's a heading that says RESP. What</p> <p>6 did you understand that to mean?</p> <p>7 A Who was responsible for that task.</p> <p>8 Q In fact, at the top of the document does it say</p> <p>9 RESP is responsible for document?</p> <p>10 A Yes, it does.</p> <p>11 Q Then there's a column that says DEL. Do you see</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q Is there a definition of what DEL means?</p> <p>15 A Yes, it says "deliverable."</p> <p>16 Q There's also a column that says "depends." Do you</p> <p>17 see that?</p> <p>18 A Depends, correct.</p> <p>19 Q Then there's a reading called "Fisher"?</p> <p>20 A Correct.</p> <p>21 Q What was the purpose of that heading, do you know?</p> <p>22 A Well, it looks like it was specifying the number</p> <p>23 of hours that particular task would take.</p> <p>24 Q Next to that is a series of letters that starts S,</p> <p>25 then O, then N, then D, etc. Do you see that?</p>

<p style="text-align: right;">442</p> <p>1 Q At the time was the RIMS system built on OS/2 IBM 2 operating system? 3 MR. ROBERTSON: Your Honor, I didn't ask 4 anything about the RIMS system. 5 THE COURT: Mr. McDonald, it seems to me 6 that's beyond the scope of the direct examination. 7 MR. McDONALD: I guess we can come back to 8 that, Your Honor. 9 BY MR. McDONALD: 10 Q Now, with the IBM system as it existed when you 11 started working with them regarding TV/2, did it have 12 the capability of putting technical publications on a 13 single CD ROM? 14 A Yes. 15 Q Technical publications could include things like 16 bulletins and catalogs, right? 17 A The only thing that they mentioned as far as what 18 they used Technical Viewer for was a parts catalog in 19 Europe for a car company. And the Manassas people 20 indicated that they worked with the U.S. Navy on their 21 documents but didn't specify what documents the Navy 22 was using it for. 23 Q Did you work with someone from IBM named Pam Eng? 24 A Yes, Pam Jenkins at the time, but I think she's 25 been married and changed her name.</p>	<p style="text-align: right;">444</p> <p>1 REDIRECT EXAMINATION 2 BY MR. ROBERTSON: 3 Q With respect to this multiple catalog capability 4 on TV/2, did TV/2 have the capacity to have multiple 5 catalog data right off the shelf? 6 A No, I don't believe it did. 7 Q Did you have to do anything or assist in any way 8 to modify TV/2 in order to be able to accommodate that 9 size of data volume that would be involved in such a 10 performance? 11 A Yes. There were two aspects of that. One was to 12 create the functionality of the catalog icon which 13 would open one or more catalogs to be searched or 14 close catalogs if you didn't want that particular one 15 searched. 16 And also Fisher had a requirement that the system 17 would not be useful if you didn't provide a 18 three-second response time back to the end user when 19 it was searching catalogs. And my understanding is 20 there was a problem with Technical Viewer once the 21 entire Fisher catalog was loaded onto the system in 22 obtaining a three-second response time. So a 23 different indexing mechanism had to be developed to 24 facilitate that requirement. 25 Q What was the indexing mechanism called?</p>
<p style="text-align: right;">443</p> <p>1 Q She was working on this project from the IBM side; 2 is that right? 3 A Correct. 4 Q Chuck DeNaris, is that also a name that's familiar 5 to you? 6 A Yes, he was the salesman from IBM. 7 Q So you interacted with him on this project? 8 A He attended the meetings and yes. 9 Q The IBM system could do a word search, correct? 10 A Correct, which we termed keyword search. 11 Q But that was already in existence before you 12 started talking to IBM about the TV/2, right? 13 A That was part of the Technical Viewer, yes. 14 Q Then you choose the TV/2 system because of its 15 features and because you didn't want to reinvent the 16 wheel, right? 17 A Correct. The prospect of writing a search engine 18 when others we are available on the market really 19 didn't make sense to us to rewrite something that 20 already existed if it performed up to our 21 specifications. 22 MR. McDONALD: I have no further questions. 23 Thank you. 24 THE COURT: Any redirect? 25</p>	<p style="text-align: right;">KINROSS - REDIRECT 445</p> <p>1 A It was called Super Index. 2 Q Were you involved at all on that project? 3 A Not -- well, only from the standpoint of it being 4 a requirement of Fisher for Technical Viewer to 5 achieve a three-second response time. But as far as 6 designing the Super Index and coding it, no, that was 7 Technical Viewer that was responsible for that. 8 Q So IBM was responsible for making that 9 modification? 10 A Yes. 11 Q Were they made to make the TV/2 program more 12 responsive in accordance with your requirement? 13 A Yes. 14 Q Was that necessary in order to accommodate the 15 volume of catalog data? 16 A Yes. 17 Q Did you indicate that you had problems with this 18 response time simply with just one catalog loaded on 19 TV/2? 20 A I didn't. IBM indicated there was a problem and 21 they wouldn't deliver the catalog until it was fixed. 22 So -- 23 Q So they went about fixing it to your 24 specifications? 25 A Yes.</p>

<p style="text-align: right;">450</p> <p>Johnson - Direct 450</p> <p>1 13 years.</p> <p>2 Q And what area of the company did you work at in Fisher</p> <p>3 Scientific?</p> <p>4 A In the information technology group.</p> <p>5 Q Just briefly, could you tell me some of the positions you</p> <p>6 held while you were at Fisher during the period of time from</p> <p>7 1986 to 1998?</p> <p>8 A Sure. I started there as a programmer analyst. I worked</p> <p>9 my way up to project leader, ultimately became a supervisor and</p> <p>10 manager of product development.</p> <p>11 Q And you are one of the named inventors on the three</p> <p>12 patents in suit here, the patents that are at issue, the '683,</p> <p>13 '516, and '172 is how we've been referring to; is that right?</p> <p>14 A Yes.</p> <p>15 Q And did you work on that project with both Mr. Momyer and</p> <p>16 Mr. Kinross?</p> <p>17 A Yes.</p> <p>18 Q Mr. Momyer has testified yesterday and today to sort of</p> <p>19 the big overview of the picture of the development of the</p> <p>20 inventions in your electronic sourcing system. What I'd like</p> <p>21 to focus on today with you is what, if any, necessary</p> <p>22 modifications, revisions, reprogramming, or new things needed</p> <p>23 to be done in order to modify the RIMS system into what became</p> <p>24 the subject matter of the these patents, the electronic</p> <p>25 sourcing system.</p>	<p style="text-align: right;">452</p> <p>Johnson - Direct 452</p> <p>1 electronic sourcing system and any modification that had to</p> <p>2 occur with RIMS?</p> <p>3 A The business logic, yeah, we had to actually strip -- the</p> <p>4 RIMS system had character-based application which we called a</p> <p>5 green screen at the time. That all had to be torn out of the</p> <p>6 code, and we had to modularize the business code in order to be</p> <p>7 able to interface with the new graphical user interface.</p> <p>8 Q We have now what I think are six separate topics. If we</p> <p>9 could go through them one by one and tell me in the simplest</p> <p>10 terms as possible, what is it, in fact, you had responsibility</p> <p>11 for doing with these revisions, modifications, reprogramming,</p> <p>12 or creating from scratch some of these things.</p> <p>13 So let's start with you indicated this construction of a</p> <p>14 graphical user interface, and we've heard that term before.</p> <p>15 Tell us what you understand that term to mean.</p> <p>16 A Graphical user interface is basically the interface that</p> <p>17 the end user sees when interacting with the system.</p> <p>18 At that time, most of the systems, especially the</p> <p>19 mainframe systems, were character-based, so they started at the</p> <p>20 left-hand corner and would go to the bottom right hand of the</p> <p>21 corner, and it would display characters, numbers, dashes,</p> <p>22 colons, things of that nature. Very cryptic.</p> <p>23 So in order for us to be able to allow for an end user,</p> <p>24 like a researcher or lab technician, to use the system, we</p> <p>25 wanted to generate or create a graphical representation of what</p>
<p style="text-align: right;">451</p> <p>Johnson - Direct 451</p> <p>1 So at a high view for now, could you just identify the</p> <p>2 areas that you were involved in that project?</p> <p>3 A The areas I was involved in was to reengineer the programs</p> <p>4 basically to be able to build a graphic user interface that the</p> <p>5 end user could use. We also modified the requisitioning</p> <p>6 portion of the system to be able to handle multiple products</p> <p>7 from various vendors.</p> <p>8 In addition to that, we also allowed for that single</p> <p>9 requisition to be broken up into multiple purchase orders by A</p> <p>10 vendor. We also built the interface actually over to the</p> <p>11 electronic catalog as well.</p> <p>12 Q I'm sorry, I didn't hear your last answer. You built the</p> <p>13 interface to the electronic catalogs?</p> <p>14 A There was an interface we built to be able to pass</p> <p>15 information from the requisitioning system over to the</p> <p>16 electronic catalog system, yes.</p> <p>17 Q What about the issue of inventory availability, did you</p> <p>18 have to do anything to modify the RIMS system in order to have</p> <p>19 that functionality in the inventions of your electronic</p> <p>20 sourcing system?</p> <p>21 A Yeah. Basically we used, tapped into a technology for EDI</p> <p>22 to be able to go out to a vendor and get some pricing and</p> <p>23 availability as well.</p> <p>24 Q What about, did you have any involvement in any of the</p> <p>25 business logic necessary for the functionality of the</p>	<p style="text-align: right;">453</p> <p>Johnson - Direct 453</p> <p>1 they would be doing, selecting products, placing orders,</p> <p>2 selecting information to select the type of orders, that kind</p> <p>3 of thing. So we built this graphical user interface to be able</p> <p>4 to make it easier, essentially, for the user to use.</p> <p>5 Q Would this graphical user interface make it easier for the</p> <p>6 user of your invention in the electronic sourcing system to</p> <p>7 utilize its features and functionality?</p> <p>8 A Yes.</p> <p>9 Q The RIMS technology, did it have a graphical user</p> <p>10 interface?</p> <p>11 A No.</p> <p>12 Q Did it have this clunky character-based interface you were</p> <p>13 talking about?</p> <p>14 A Yeah. As I said, it was a character-based application.</p> <p>15 It was originally designed for a Fisher Scientific CSR to</p> <p>16 utilize, so it required a large number of hours to train this</p> <p>17 person on how to use it. There were abbreviations in there,</p> <p>18 things like, for example, if we wanted them to enter a stock</p> <p>19 number, the title of the field was STKNO. If we wanted them to</p> <p>20 enter a particular product type, it was just characters, PT.</p> <p>21 So unless you understood what that meant, you wouldn't know</p> <p>22 what to enter into that system.</p> <p>23 Q Are you familiar with the term green screen?</p> <p>24 A Yes.</p> <p>25 Q What is a green screen?</p>

<p style="text-align: right;">454</p> <p>Johnson - Direct 454</p> <p>1 A And old mainframe terminology where the characters on the</p> <p>2 screen are basically green.</p> <p>3 Q Did the RIMS have a green screen technology?</p> <p>4 A Yes.</p> <p>5 Q I'm sorry?</p> <p>6 A Yes.</p> <p>7 Q And were you involved in programming and creating this</p> <p>8 graphical user interface for the electronic sourcing system?</p> <p>9 A Yes. I was involved in providing all the requirements to</p> <p>10 the people that worked for me to develop it, yes.</p> <p>11 Q Did you supervise those people?</p> <p>12 A Yes.</p> <p>13 Q You also mentioned you had to design the interface for</p> <p>14 communication between the requisitioning and purchasing program</p> <p>15 and the catalog database. Could you tell me what that entailed</p> <p>16 and why that was necessary?</p> <p>17 A Well, it was necessary because the initial idea was to</p> <p>18 supply a system that would allow us to do a complete supply</p> <p>19 chain management end to end, be able to select products,</p> <p>20 process the requisition, and ultimately generate a purchase</p> <p>21 order.</p> <p>22 In order to do that, we needed to connect the</p> <p>23 requisitioning management system to this electronic catalog, so</p> <p>24 we built some APIs, which are application program interfaces,</p> <p>25 that had a two-way communication channel basically between the</p>	<p style="text-align: right;">456</p> <p>Johnson - Direct 456</p> <p>1 A As far as communicating with a catalog?</p> <p>2 Q Yes.</p> <p>3 A No.</p> <p>4 Q You also mentioned something about splitting the</p> <p>5 presentation layer, I believe, from the business logic. Do you</p> <p>6 recall that?</p> <p>7 A Yes.</p> <p>8 Q What was that?</p> <p>9 A RIMS was designed as a very traditional, what I'll call</p> <p>10 CICS COBOL mainframe system.</p> <p>11 Q You have to stop there, and we're going to say again,</p> <p>12 we're going --</p> <p>13 A Keep it high level. I'm sorry. I get technical</p> <p>14 sometimes.</p> <p>15 THE COURT: It's okay, but it would be better you all</p> <p>16 don't talk while each other are talking. You can be technical</p> <p>17 all you want to.</p> <p>18 Q You mentioned CICS COBOL. I think I interrupted you, so</p> <p>19 why don't you finish your answer. What is CICS COBOL?</p> <p>20 A COBOL is a common business oriented language. It's a</p> <p>21 program language we used to develop the original RIMS system.</p> <p>22 CICS is a transaction processor which allows COBOL</p> <p>23 programs to run in that environment. It's a very traditional</p> <p>24 system, very geared towards businesses that want to process a</p> <p>25 lot of data very quickly.</p>
<p style="text-align: right;">455</p> <p>Johnson - Direct 455</p> <p>1 requisition management system and the cataloging system so we</p> <p>2 could pass data back and forth without losing any information.</p> <p>3 Q Did you have that interface in the RIMS system, or did</p> <p>4 that have to be created?</p> <p>5 A No, that was not in the RIMS system. That had to be</p> <p>6 created.</p> <p>7 Q Why is that?</p> <p>8 A It wasn't there.</p> <p>9 Q Why --</p> <p>10 THE COURT: You asked for it.</p> <p>11 Q Let me see if I can rephrase the question. Why did you</p> <p>12 feel that it was necessary?</p> <p>13 A Well, it was necessary because in order for us to provide</p> <p>14 a complete shopping experience without frustrating the user, we</p> <p>15 wanted to seamlessly be able to process the information they</p> <p>16 were selecting in the catalog into the requisition without them</p> <p>17 having to look at a catalog, go over to the requisition system,</p> <p>18 type it in, go back to the catalog, look for another product,</p> <p>19 write it down, go over to the requisition system and type it</p> <p>20 in. We wanted a seamless interface so the user just had to</p> <p>21 point and click and push a button, and all that data would flow</p> <p>22 automatically.</p> <p>23 Q The way you described the difficulty you were trying to</p> <p>24 overcome, did the RIMS system even have that kind of primitive</p> <p>25 technology?</p>	<p style="text-align: right;">457</p> <p>Johnson - Direct 457</p> <p>1 Q And so did you need to be able to have that, to modify</p> <p>2 that capability from RIMS to your electronic sourcing system</p> <p>3 inventions in order to have that capability of transferring and</p> <p>4 moving around a lot of data?</p> <p>5 A Well, I mean, what you asked me is what did we do to the</p> <p>6 business logic to remove the presentation layer. What we</p> <p>7 needed to do was we needed to basically reengineer those</p> <p>8 programs so they no longer worked with the green screens that I</p> <p>9 mentioned earlier.</p> <p>10 Those green screens were ripped out of those programs, and</p> <p>11 we converted those programs into basically what we now call</p> <p>12 business object that all it did was manage the business logic.</p> <p>13 Then we built the interfaces to the graphical user interface</p> <p>14 so, in short, the GUI could interface to the business logic.</p> <p>15 Q Was that an important aspect for making your invention</p> <p>16 user-friendly and functional?</p> <p>17 A Yeah. It was pretty much a requirement.</p> <p>18 Q And just so I'm clear, that wasn't available or present in</p> <p>19 the RIMS system?</p> <p>20 A No.</p> <p>21 Q You also, I think, mentioned that you had to modify</p> <p>22 requisition coding; is that correct?</p> <p>23 A Yes. We -- at the time, the RIMS system could only</p> <p>24 communicate to the Fisher mainframe, Fisher being Fisher</p> <p>25 Scientific. The programs were primarily sourcing those</p>

<p style="text-align: right;">458</p> <p>Johnson - Direct 458</p> <p>1 products all to Fisher, so it was one requisition and</p> <p>2 ultimately one requisition that was sent to the Fisher</p> <p>3 mainframe as an order. So basically we changed those programs</p> <p>4 to be able to accept, in the requisitioning process, the</p> <p>5 ability to add multiple products from different vendors to a</p> <p>6 single requisition.</p> <p>7 Q In modifying this requisition coding, did it also address</p> <p>8 any issues involving the purchase orders from these</p> <p>9 requisitions?</p> <p>10 A Yes. As an end result, once the requisition was created,</p> <p>11 the user could say, yes, I want this order, go ahead and place</p> <p>12 it. The system would then take that requisition and by vendor</p> <p>13 create multiple purchase orders with the products associated to</p> <p>14 that vendor.</p> <p>15 Q You also mentioned this purchase order creation capability</p> <p>16 that you needed to do. Can you tell me how that changed from</p> <p>17 the prior RIMS system, if at all, to -- for purposes of your</p> <p>18 invention?</p> <p>19 A Well, as I said earlier, RIMS could only communicate to</p> <p>20 the Fisher mainframe, so the order was actually created through</p> <p>21 the Fisher mainframe system. So in the electronic sourcing</p> <p>22 system, what we needed to do was to be able to create purchase</p> <p>23 orders that could be sent out to vendors through one of a</p> <p>24 couple of different mechanisms to get the purchase order over</p> <p>25 to the appropriate vendor.</p>	<p style="text-align: right;">460</p> <p>1 to go on backorder. In order to do that, we introduced a</p> <p>2 technology of EDI to be able to generate -- back then what it</p> <p>3 was called was a request for quote, to be able to send to a</p> <p>4 vendor to say, can you give me the information about this</p> <p>5 product, do you have it in stock, and how much is it going to</p> <p>6 cost me.</p> <p>7 So that request for quote would be responded to by the</p> <p>8 vendor with a response to request for quote that would give us</p> <p>9 that information.</p> <p>10 Q Now, RIMS had some inventory availability capability with</p> <p>11 regard to Fisher products; is that right?</p> <p>12 A Yes, it did.</p> <p>13 Q Did RIMS have this inventory availability capability you</p> <p>14 just described with regard to multiple vendors?</p> <p>15 A No.</p> <p>16 MR. ROBERTSON: That's all I have. Please answer</p> <p>17 whatever questions Mr. McDonald may have.</p> <p>18 MR. McDONALD: I take it, Your Honor, you want to</p> <p>19 keep us rolling, rolling, rolling.</p> <p>20 THE COURT: I don't think you have many questions, do</p> <p>21 you? He hasn't been on but about 15 minutes or so.</p> <p>22 MR. McDONALD: That's true.</p> <p>23 THE COURT: I don't see how you are going to go</p> <p>24 beyond that, but if we do, we'll see where we are in</p> <p>25 15 minutes.</p>
<p style="text-align: right;">459</p> <p>Johnson - Direct 459</p> <p>1 Q When you say sent out, that could be sent out from a local</p> <p>2 computer where an individual was using your electronic sourcing</p> <p>3 invention to make a request for an item from multiple vendors?</p> <p>4 A It was a computer that was located at the customer</p> <p>5 location, yes.</p> <p>6 Q The end user could utilize the electronic sourcing system</p> <p>7 in order to accomplish the goals of your invention; is that</p> <p>8 right?</p> <p>9 A Yes. They would be working on a work station</p> <p>10 theoretically in their laboratory or in their office</p> <p>11 communicating to a server located on the network.</p> <p>12 Q And that server on the network would have information</p> <p>13 available to transmit that contained information about products</p> <p>14 that were available?</p> <p>15 A That's where the business logic resided, yes.</p> <p>16 Q You also mentioned this inventory availability issue that</p> <p>17 had to be addressed with respect to modifying or revising,</p> <p>18 reprogramming the RIMS system in order to achieve the goals of</p> <p>19 your electronic sourcing system. Do you recall that?</p> <p>20 A Yes.</p> <p>21 Q What did that entail?</p> <p>22 A End users, in other words, for them to make a good</p> <p>23 decision as to whether or not to make a purchase, they want to</p> <p>24 know pricing and availability, how much is it going to cost</p> <p>25 them and am I going to get the product shipped, or is it going</p>	<p style="text-align: right;">461</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MR. McDONALD:</p> <p>3 Q Mr. Johnson, I'd like to talk about the graphical</p> <p>4 interface user issue. You were describing, I think, the steps</p> <p>5 you took to get an actual physical embodiment of the product</p> <p>6 put together in your answers; right?</p> <p>7 A That's what we did to build the system, yes.</p> <p>8 Q I'd like to talk to you about the system as it existed</p> <p>9 when you actually filed the patents in this suit; okay?</p> <p>10 A Okay.</p> <p>11 Q The patents, if you have Exhibit 1 before you, that was</p> <p>12 filed August 10th of 1994; correct?</p> <p>13 MR. ROBERTSON: Your Honor, I'm going to object.</p> <p>14 This is outside the scope of my direct.</p> <p>15 THE COURT: I don't know if it is or isn't yet.</p> <p>16 Let's wait until we get a question that deals with the</p> <p>17 graphical user interface system first. That's what he wants to</p> <p>18 talk about. There may be an objection, Mr. Johnson, so don't</p> <p>19 answer the question. We'll see if there's an objection and</p> <p>20 ruling.</p> <p>21 THE WITNESS: Okay.</p> <p>22 THE COURT: So as of -- you are talking as of</p> <p>23 August 10, 1994, what?</p> <p>24 Q So on that date, that's when you filed the patent</p> <p>25 applications in this case; correct?</p>

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<p>515</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION</p> <p>4 ----- 5 ePLUS, INC., : 6 : 7 Plaintiff, : 8 v. : Civil Action 9 : No. 3:09CV620 10 LAWSON SOFTWARE, INC., : 11 : January 6, 2011 12 Defendant. : 13 -----</p> <p>14 COMPLETE TRANSCRIPT OF JURY TRIAL 15 BEFORE THE HONORABLE ROBERT E. PAYNE 16 UNITED STATES DISTRICT JUDGE, AND A JURY</p> <p>17 APPEARANCES: 18 Scott L. Robertson, Esq. 19 Jennifer A. Albert, Esq. 20 Michael T. Strapp, Esq. 21 David M. Young, Esq. 22 GOODWIN PROCTOR 23 901 New York Avenue, NW 24 Washington, D.C. 20001 25 Craig T. Merritt, Esq. CHRISTIAN & BARTON 909 E. Main Street, Suite 1200 Richmond, VA 23219-3095</p> <p>Counsel for the plaintiff ePlus</p> <p>DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT</p>	<p>517</p> <p>1 (The proceedings in this matter commenced at 2 9:20 a.m.)</p> <p>3 THE CLERK: Civil Action No. 3:09CV00620, 4 ePlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer A. Albert, Mr. Michael T. Strapp, and Mr. 7 David M. Young represent the plaintiff. 8 Mr. Daniel W. McDaniel, Mr. Dabney J. Carr, 9 IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. 10 Schultz represent the defendant.</p> <p>11 Are counsel ready to proceed? 12 MR. ROBERTSON: Yes, Your Honor. 13 MR. McDONALD: Yes, Your Honor. 14 THE COURT: All right. Thank you very much. 15 I apologize for keeping you-all waiting this 16 morning. I had a mechanical malfunction that I needed 17 to attend to, and I'm not very mechanically oriented. 18 All right, Mr. Robertson. 19 Dr. Weaver, I remind you you're under the 20 same oath which you took yesterday. 21 THE WITNESS: Yes, Your Honor. 22 BY MR. ROBERTSON: (Continuing) 23 Q Good morning, Dr. Weaver. 24 A Good morning. 25 Q If we could have Plaintiff's Exhibit No. 1 back up</p>
<p>516</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 MERCHANT & GOULD 6 3200 IDS Center 7 80 South Eighth Street 8 Minneapolis, MN 55402-2215 9 Dabney J. Carr, IV, Esq. 10 TROUTMAN SANDERS 11 Troutman Sanders Building 12 1001 Haxall Point 13 P.O. Box 1122 14 Richmond, VA 23218-1122</p> <p>Counsel for the defendant Lawson Software.</p>	<p>518</p> <p>1 on the screen again, the '683 patent, the cover page 2 here.</p> <p>3 Dr. Weaver, the jurors have seen this exhibit now 4 several times and it's in their jury notebooks. This 5 is at tab 2. Can you just tell us what is the title 6 of the patent? 7 A Electronic Sourcing System and Method. 8 Q Has the Court defined the term "electronic 9 sourcing system"? 10 A Yes, it has. 11 Q What's your understanding as to what that 12 construction is? 13 A In the glossary of claim terms, the "electronic 14 sourcing system" has been defined by the Court to be 15 an electronic system for use by a prospective buyer to 16 locate and find items to purchase from sources, 17 suppliers or vendors. 18 Q What is your understanding of what a source is, 19 sir? 20 A A source would be a vendor or a manufacturer or a 21 distributor. 22 Q In the Court's construction of the claim term 23 "catalog" or "product catalog," how does the Court 24 define what a vendor can be? 25 A The vendor, in the Court's construction, a vendor</p>

<p>559</p> <p>1 A We sure will.</p> <p>2 Q The next element of Claim Three, which is</p> <p>3 color-coded blue and has this means for building a</p> <p>4 requisition using data relating to selected matching</p> <p>5 items and their associated sources, what's your</p> <p>6 understanding as to what a requisition is?</p> <p>7 A The requisition is the formal list of items that</p> <p>8 you wish to purchase.</p> <p>9 Q Moving on to the next element of Claim Three,</p> <p>10 which is yellow in your illustration. It says, A</p> <p>11 means for processing the requisition to generate one</p> <p>12 or more purchase orders for the selected matching</p> <p>13 items. You mention the term "purchase order" when you</p> <p>14 were discussing requisitions. How does a purchase</p> <p>15 order differ from a requisition?</p> <p>16 A The requisition is the list of things you want. A</p> <p>17 purchase order is the contract vehicle for buying. So</p> <p>18 when I have a purchase order and I send it to a</p> <p>19 company, this is the legal document that says I want</p> <p>20 to buy the item or items on this purchase order.</p> <p>21 Requisition is your total list of things you'd</p> <p>22 like to buy. Purchase orders go to individual</p> <p>23 companies.</p> <p>24 Q When you're providing your understanding of the</p> <p>25 definitions and the meanings of these terms, is that</p>	<p>561</p> <p>1 MR. McDONALD: Your Honor, I'm going to</p> <p>2 object to this question about this. This is a</p> <p>3 means-plus-function clause and he's asking him what it</p> <p>4 means. It should be done in the context of the --</p> <p>5 THE COURT: I was just looking at page 2 of</p> <p>6 the glossary. I think that's been defined over there.</p> <p>7 MR. ROBERTSON: I was just going to ask him</p> <p>8 to go to that page.</p> <p>9 THE COURT: Don't be having him give his own</p> <p>10 constructions, please, before you ask him to go to the</p> <p>11 ones that have been construed.</p> <p>12 BY MR. ROBERTSON:</p> <p>13 Q If you go to page 2 of the Court's glossary, Dr.</p> <p>14 Weaver.</p> <p>15 A Yes.</p> <p>16 Q What's the function that's being defined here on</p> <p>17 the means for converting data for this claim element?</p> <p>18 A The function of this element is converting data</p> <p>19 related to a selected matching item and an associated</p> <p>20 source.</p> <p>21 Q According to the Court, how can this function be</p> <p>22 accomplished? By what structure?</p> <p>23 A The corresponding structures, materials or acts of</p> <p>24 this element are disclosed as one or more non-catalog</p> <p>25 databases identifying cross-referenced items,</p>
<p>560</p> <p>1 the same understanding as a person of ordinary skill</p> <p>2 in the art at the time?</p> <p>3 A Yes.</p> <p>4 Q So how would the fifth element of Claim Three be</p> <p>5 satisfied?</p> <p>6 A We would have to see a requisition module that can</p> <p>7 take the formal requisition, which could have many</p> <p>8 items from many vendors, and then turn that into one</p> <p>9 or more purchase orders. And, typically, you have all</p> <p>10 the items from one vendor on one purchase order if you</p> <p>11 can do it. If they are present.</p> <p>12 Q Moving on to the sixth and last element of Claim</p> <p>13 Three, which you have color-coded brown. That element</p> <p>14 recites means for converting data relating to a</p> <p>15 selected matching item and an associated source to</p> <p>16 data relating to an item and a different source. How</p> <p>17 are we to understand that claim element?</p> <p>18 A So if I have a list of items and for some</p> <p>19 reason -- let's say I want to do comparison shopping</p> <p>20 or say that the item that I want, I've checked the</p> <p>21 inventory, and it's not available. So there has to be</p> <p>22 a converting means whereby I can look for similar</p> <p>23 items, and this is all computer assisted. I can find</p> <p>24 similar items that I might choose instead of the one</p> <p>25 that I had initially inquired about.</p>	<p>562</p> <p>1 identical items, or generally equivalent items; one or</p> <p>2 more cross-reference tables or file identifying</p> <p>3 cross-referenced items, identical items, or generally</p> <p>4 equivalent items; one or more codes corresponding to</p> <p>5 cross-referenced items, identical items or generally</p> <p>6 equivalent items; and their equivalents.</p> <p>7 Q In that definition there are non-catalog databases</p> <p>8 identifying cross-referenced items, identical items or</p> <p>9 generally equivalent items, cross-reference tables or</p> <p>10 files and one or more codes.</p> <p>11 As a computer scientist, can you tell us what your</p> <p>12 understanding as a person of ordinary skill in the art</p> <p>13 would understand those three terms to mean?</p> <p>14 A Sure. So a non-catalog database is a file that is</p> <p>15 not part of the physical structure of the database</p> <p>16 system. So it's an external file.</p> <p>17 In this context, it's identifying the</p> <p>18 cross-referenced items. So, for instance, we might</p> <p>19 have a vendor -- think of a file that has records.</p> <p>20 Think of that as a row in a table. We might have one</p> <p>21 vendor's part number and a second vendor's part number</p> <p>22 in that row. And if this is in a cross-reference</p> <p>23 index that indicates in this context that those two</p> <p>24 part numbers are identical or generally equivalent --</p> <p>25 let's see. What was the next one? Okay.</p>

<p>563</p> <p>1 Cross-reference tables or files. So this is a larger 2 structure, but it contains that same type of 3 information. Vendor part No. 1 is equivalent to this 4 other vendor part No. 2. 5 And by equivalent, I mean identical or generally 6 equivalent. 7 And then by codes, this means that there is an 8 understood structure, understood by the computer and 9 perhaps by the human inputting these codes as to what 10 the codes mean. So in one case -- 11 MR. McDONALD: Your Honor, I'm going to 12 object. I don't think his interpretation of codes is 13 in his report. 14 BY MR. ROBERTSON: 15 Q Doctor, did you do analysis of whether or not the 16 Lawson system employs codes for performing this 17 cross-referencing capability or this means for 18 converting data as the Court has construed the claim? 19 A Yes, it does. 20 Q What type of codes? 21 A That particular code is called a UNSPSC code, 22 United Nations Standard Products and Services Codes. 23 Q We're going to come back to that, but could you 24 just briefly explain to the jury what type of code 25 that is.</p>	<p>565</p> <p>1 element. This determining whether selected matching 2 items is available in inventory. Can you tell us how 3 the patent describes that process? 4 A When the customer service representative who is 5 using the system does a search for an item, one of the 6 functions that is supported here is inquiring about 7 what quantity of those items is available in the 8 inventory database. And so if you inquire and you get 9 back a quantity of zero or if you get back a quantity 10 that's less than the number you want, you know that 11 those items are not available in inventory. 12 Q You indicated there could be a CSR. That's a 13 customer service representative. Does it have to be 14 in the patent? 15 A No, that's just an example. 16 Q The claim itself doesn't recite whoever the user 17 is, does it? 18 A No. 19 Q I'd like to talk a little bit now about sort of a 20 general overview of the Lawson accused systems and 21 methods that you have examined as part of your 22 analysis. Would that be all right? 23 A Sure. 24 Q Do we have a demonstrative that you have prepared 25 as to what you consider the procurement system in the</p>
<p>564</p> <p>1 THE COURT: Why don't you tell me where it is 2 here because that's what the objection is. 3 MR. McDONALD: He's talking about UNSPSC 4 codes, Your Honor. I will agree that's in there. 5 THE COURT: The objection is withdrawn. 6 MR. ROBERTSON: Thank you. 7 Q In examining this kind of cross-referencing or 8 converting capability, is it described in the patent? 9 A Yes. 10 Q Why don't we use the '683 patent, if we can, and 11 go to column 16. That's at tab 2 in the juror 12 notebook specifically at about lines 19 through 27. 13 What's the example being given here as how this 14 cross-referencing or converting process for finding 15 identical or generally equivalent items can be 16 accomplished? 17 A The general idea here is that a particular part 18 number has been entered into this electronic sourcing 19 system and that particular part number is not 20 available, but the cross-referencing system using the 21 cross-reference index finds that another vendor's part 22 number is the same or generally equivalent, and it 23 substitutes the second part number for the first. 24 Q Why don't we go to a different claim now, Claim 26 25 of the '683 patent. And I want to focus on this last</p>	<p>566</p> <p>1 various modules to be? 2 A We do. 3 Q Now, this was prepared at your direction? 4 A Yes. 5 Q What are you intending to illustrate here, sir? 6 A I'm trying to show the various modules and 7 components that are in the Lawson system, and I've 8 tried to map them by color to the claims of the '683, 9 Claim 26. 10 Q By the way, Doctor, is your touch screen working? 11 A Yes. 12 Q So you might want to, if you need to, you can 13 utilize that capability. 14 A I can use my pointer. 15 Q All right. So I'm sorry. I interrupted you. You 16 have got a catalog database icon there. Do you see 17 that? 18 A Right here. So this is the set of catalogs in 19 electronic form. 20 Q Actually is that the user sitting at the computer? 21 Do you see the catalog database? 22 A Yes. 23 Q Where? 24 A You're talking about this one. 25 Q Yes, sir.</p>

<p>567</p> <p>1 A Yeah, okay. So the catalog database is the</p> <p>2 electronic form of the catalogs all put together so</p> <p>3 that they can be searched. That is the catalog</p> <p>4 database.</p> <p>5 Q Does the Lawson procurement system include a</p> <p>6 database in its inventory control module?</p> <p>7 A Yes, it does.</p> <p>8 Q Can supplier product catalog be loaded into that</p> <p>9 control module?</p> <p>10 A Yes, we'll see that.</p> <p>11 Q What's the selection icon?</p> <p>12 A Of all the catalogs that are in the database, the</p> <p>13 user interface provides a way to select one or more</p> <p>14 that are going to be searched.</p> <p>15 Q Now, you have all of these modules I see here</p> <p>16 within a gray box. What are you trying to illustrate</p> <p>17 there?</p> <p>18 A The gray box is the Lawson system.</p> <p>19 Q And these are the various components?</p> <p>20 A These are components, modules.</p> <p>21 Q There's an icon there for searching for matching</p> <p>22 items. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q What did you intend to illustrate there?</p> <p>25 A Using the user interface, one engages a search</p>	<p>569</p> <p>1 delete to it. So in computer terminology, we call</p> <p>2 this a cache, a C-A-C-H-E. So it's a data structure</p> <p>3 that holds data, and then it's going to be transferred</p> <p>4 to the requisition module, and it's in the requisition</p> <p>5 module that the requisition is created.</p> <p>6 Q All right. Thank you for that correction. So is</p> <p>7 it consistent with an order list?</p> <p>8 A The order list is the shopping cart and that's</p> <p>9 what becomes the requisition.</p> <p>10 Q Did the Court define what an order list is in its</p> <p>11 glossary of claim terms?</p> <p>12 A Yes. A list of desired catalog items.</p> <p>13 Q Did you apply that construction in doing your</p> <p>14 infringement analysis?</p> <p>15 A Absolutely.</p> <p>16 Q Next you have an icon for generating purchase</p> <p>17 orders. Do you see that as part of the overview of</p> <p>18 the Lawson procurement system?</p> <p>19 A Yes.</p> <p>20 Q Can you explain that process here?</p> <p>21 A So we've got our requisition. This is our formal</p> <p>22 list of the things we want to buy. It might have one</p> <p>23 item. It might have a hundred items. The items might</p> <p>24 be from one vendor or they might be from 100 vendors.</p> <p>25 Whatever that requisition says, the purchase order</p>
<p>568</p> <p>1 program and gives it a search query or initiates a</p> <p>2 search using a characteristic of a drop down menu.</p> <p>3 And the search engine then engages and returns items</p> <p>4 that match the query.</p> <p>5 Q Did you examine a Lawson software program that</p> <p>6 permits a user of a Lawson system to perform that</p> <p>7 functionality?</p> <p>8 A Yes, the requisitioning system does that.</p> <p>9 Q You have building a requisition icon here. Do you</p> <p>10 see that?</p> <p>11 A Yes.</p> <p>12 Q Please explain what you're intending to illustrate</p> <p>13 there?</p> <p>14 A So in the Lawson system you build a shopping cart,</p> <p>15 then you add and delete items from it until you're</p> <p>16 satisfied with it. And then you do a checkout from</p> <p>17 the Lawson system. And that engages the requisition</p> <p>18 system and builds the requisition of all the items</p> <p>19 that you want to order.</p> <p>20 Q Are you familiar with the term "a shopping cart"?</p> <p>21 A Yes.</p> <p>22 Q Is that consistent with your understanding of</p> <p>23 building a requisition?</p> <p>24 A Well, it's not the requisition. It's the data</p> <p>25 structure that can be modified. You can add and</p>	<p>570</p> <p>1 module takes that requisition and typically pulls out</p> <p>2 all of the requisition items that are going to be</p> <p>3 ordered from a single vendor and creates a purchase</p> <p>4 order for that vendor. Then it pulls all the items</p> <p>5 that go to another vendor and creates a separate</p> <p>6 purchase order for the second vendor and so on until</p> <p>7 all the items in the requisition have appeared in some</p> <p>8 purchase order.</p> <p>9 Q Did you do analysis of any Lawson software program</p> <p>10 or module that performs that functionality?</p> <p>11 A Yes, we're going to see that, and it's going to be</p> <p>12 the Lawson P.O. 100 program. Their purchase order</p> <p>13 program that converts a requisition into one or more</p> <p>14 purchase orders.</p> <p>15 Q Now, you've illustrated a number of arrows between</p> <p>16 these various software programs or modules that you've</p> <p>17 identified as part of the overall Lawson infringing</p> <p>18 system. What are you intending to indicate by those</p> <p>19 arrows?</p> <p>20 A Well, the arrows with the single head indicate</p> <p>21 unit directional information flow. The arrows that</p> <p>22 are double-headed indicate bidirectional data flow</p> <p>23 back and forth.</p> <p>24 So, for instance, the arrow here between selection</p> <p>25 and searching, you use that user interface to engage</p>

<p>703</p> <p>1 as to whether that's a multiple catalog availability 2 or a single catalog? 3 A Well, as we just saw when we did our Punchout 4 Staples and Dell, those were two completely separate 5 catalogs on separate websites run by different people. 6 So those are unquestionably separate catalogs. 7 Q Do you have an understanding about whether the 8 '683 patent, for example, requires catalogs to be 9 searched simultaneously? 10 A It does not. 11 Q Did the Court in any of its claim constructions 12 have that requirement? 13 A No, that's not in the claim construction. 14 Q Does the Lawson system have the capability of 15 enabling you to select search first a product catalog 16 and then subsequently select a search in another 17 product catalog? 18 A Yes. 19 Q Do you see that in any of your demonstrations? 20 A Yes, we did. The Bush or Basyx. 21 Q In the demonstration in Punchout, did we see that 22 ability to select those product catalogs? 23 A Yes, we did because we saw that in Dell and in 24 Staples. 25 Q Why don't we talk a little bit about searching for</p>	<p>705</p> <p>1 A Yes. We saw that in the documentation with the PO 2 536 program. 3 Q Did you see representation that Lawson said they 4 could import multiple catalogs? 5 A Yes, we did. 6 Q So I did want to address this searching the 7 selected product catalogs using Lawson's keyword 8 search. You're familiar with that? 9 A Yes. 10 Q Are you familiar with Lawson's contention that it 11 searches the entire item master and therefore the 12 Lawson systems don't, and its search engine, does not 13 search only selected portions of catalogs, but rather 14 the entire item master? 15 A I'm aware of that, but I disagree with that. 16 Q Why do you disagree with that? 17 A Because the way that the system is built it uses a 18 search index. If you think about building a complex 19 system, you would never build it such that you had to 20 search through every single item in order to match a 21 search query. It would take forever if the database 22 was of any size. So that's not the way relational 23 databases get built. 24 Instead there's a search index, and so like the 25 index of a book, you have keywords, and they point to</p>
<p>704</p> <p>1 selected product catalogs using the Lawson keyword 2 index? 3 THE COURT: Excuse me. Before you do that, 4 are you saying in your view item master is not a 5 single catalog but is a multiple catalog because it 6 has imported into it all number of parts of other 7 catalogs? 8 THE WITNESS: Well, let me just be clear. 9 THE COURT: Yes. 10 THE WITNESS: If the item master is built by 11 importing multiple vendor catalogs, then in my opinion 12 is that database contains multiple vendor catalogs. 13 THE COURT: But what if it is built by 14 importing part of multiple catalogs, parts of 15 catalogs? 16 THE WITNESS: In my opinion, it's still 17 multiple catalogs. 18 THE COURT: I just want to know -- and it's 19 because in those instances you think it's a function 20 of importation? 21 THE WITNESS: Yes, sir. 22 THE COURT: All right. 23 BY MR. ROBERTSON: 24 Q Does the Lawson system have the capability of 25 importing multiple vendor catalogs?</p>	<p>706</p> <p>1 where in the database those items reside. 2 So if I do a keyword search for Dell, I look it up 3 in the index, and that tells me where the Dell items 4 are, and I only look at those. 5 Q Do you have any demonstratives that you prepared 6 to help illustrate this point? 7 A I do. 8 Q Could we go to 09 at page 15. Okay. Here you 9 have a definition of an index from Webster's New World 10 Computer Dictionary. What significance here should we 11 be focused on as you talk about this computer search 12 index that's being utilized? 13 A This part here. When searching or sorting the 14 database, the program uses the index rather than the 15 full database. Such operations are faster than sorts 16 or searches performed on the actual database. 17 Q As a computer scientist, is using an index in 18 order to search a relational database something that 19 is utilized in order to make those faster searches? 20 A Absolutely. 21 Q Do you know how the Lawson's system search index 22 is created? 23 A Yes. 24 Q What is that? 25 A There's a process by which keywords are defined</p>

<p>707</p> <p>1 that are going to become searchable. So there's a</p> <p>2 keyword search setup program that you run, and then</p> <p>3 after you've defined what keywords are going to be</p> <p>4 searchable and you've got your database loaded, and</p> <p>5 the item master is now full of data, you run the</p> <p>6 keyword search load program. That builds the index.</p> <p>7 And now until you have changed the database, you</p> <p>8 have got an index into all the searchable keywords</p> <p>9 that -- all of the keywords that were chosen to be</p> <p>10 searchable.</p> <p>11 Q Are some of those keywords like item description,</p> <p>12 item number, classification code that you've been</p> <p>13 addressing already?</p> <p>14 A Yes, they are.</p> <p>15 Q Which database tables is the search index built?</p> <p>16 A I'm sorry. Say that again.</p> <p>17 Q Sure. From which database tables is the search</p> <p>18 index built?</p> <p>19 A The item master. Well, and the vendor item table,</p> <p>20 too.</p> <p>21 Q Once the user has selected the field of the item</p> <p>22 data that are to be searchable, what is the next step</p> <p>23 in building this index?</p> <p>24 A So after you have chosen your keywords, you have</p> <p>25 to load them all, and then you -- the computer system,</p>	<p>709</p> <p>1 A The first two paragraphs. You can search the</p> <p>2 catalog, which will search for items in your item</p> <p>3 master or vendor items. It also allows you to search</p> <p>4 for keywords for up to 29 fields based on your set up.</p> <p>5 You can also search based on categories which can use</p> <p>6 the UNSPSC code categories. And I think we've heard</p> <p>7 the rest of that before.</p> <p>8 Q We've gone over that. Let me direct you then to</p> <p>9 page 12 of the document. Is this a Lawson keyword</p> <p>10 search setup proposal?</p> <p>11 A Well, this is the training guide and --</p> <p>12 Q This is teaching the customers how to set up the</p> <p>13 keywords?</p> <p>14 A Yes, it is.</p> <p>15 Q What's the next page?</p> <p>16 A Keyword search load.</p> <p>17 Q What is that?</p> <p>18 A So that was the second program that you have to</p> <p>19 run. The first one, the keyword search set up, this</p> <p>20 is where you choose which of the 29 different fields</p> <p>21 will become searchable. So after you have got them</p> <p>22 chosen, and you've got your item master database</p> <p>23 loaded, then you run the keyword search load, and it</p> <p>24 builds the index.</p> <p>25 Q Then if you will turn to page 29. There's a slide</p>
<p>708</p> <p>1 the keyword search load program, builds this index</p> <p>2 that is search engine then uses thereafter.</p> <p>3 Q Can you take a look at Plaintiff's Exhibit</p> <p>4 No. 136. It's in Volume III. It's entitled,</p> <p>5 "Requisition Self Service 8.1, 9.0."</p> <p>6 A Yes.</p> <p>7 Q What is this exhibit, if you know?</p> <p>8 A This is a training program for requisition self</p> <p>9 service. This particular one is a copy of what a</p> <p>10 human trainer would be using in terms of slides and</p> <p>11 notes. So if you're familiar with Microsoft</p> <p>12 PowerPoint, it has a notes feature. So here is the</p> <p>13 slide itself, and below it are the notes. So if I</p> <p>14 were a trainer training you as an RSS class, I would</p> <p>15 be showing you this picture up here, and then this</p> <p>16 would be my reminder text of what I wanted to tell you</p> <p>17 about the slide that I'm showing you. Instead of</p> <p>18 having an audio recording, you've got words.</p> <p>19 Q Is this a presentation that Lawson gives to train</p> <p>20 its customers?</p> <p>21 A Yes.</p> <p>22 Q Why don't we go to page 3 of the document, if we</p> <p>23 could. It's Bates label is 687.</p> <p>24 A Right.</p> <p>25 Q What would you like us to focus on here?</p>	<p>710</p> <p>1 there that says "creating a requisition by searching</p> <p>2 the catalog"?</p> <p>3 A Yes.</p> <p>4 Q What's being depicted there?</p> <p>5 A So this is something that we have seen. When I</p> <p>6 did the category search and picked items and built a</p> <p>7 requisition. So it says down here, When using the</p> <p>8 search catalog task, you enter the value you want to</p> <p>9 look for in the search field. As soon as you type in</p> <p>10 the third letter, the system begins searching for the</p> <p>11 matching keywords and displays the result as a drop</p> <p>12 down list.</p> <p>13 Keywords exist because you enable certain fields</p> <p>14 as searchable in this IC00.5 program and run IC800 to</p> <p>15 build keywords from these fields.</p> <p>16 So that's the setup and load. IC800 is the</p> <p>17 keyword load.</p> <p>18 Q So what if anything do the pages of this document</p> <p>19 have with respect to your understanding of how the</p> <p>20 Lawson system or whether the Lawson system uses a</p> <p>21 search index to conduct its searches?</p> <p>22 A Well, it absolutely does such that it need not</p> <p>23 search the entire database. That's what keyword setup</p> <p>24 is about and how a keyword load turns that into an</p> <p>25 actual index.</p>

<p>711</p> <p>1 Q So once you have enabled the keyword terms and you</p> <p>2 built the search index, how does the Lawson search</p> <p>3 engine conduct a search of the item data in the</p> <p>4 database?</p> <p>5 A So if I type in a word into a text box, say Dell,</p> <p>6 and engage the search engine, it goes to the search</p> <p>7 index. It looks up Dell. It finds records in the</p> <p>8 database that match the keyword Dell. And then it</p> <p>9 extracts that data from the database and presents that</p> <p>10 to me on the screen.</p> <p>11 Q Do you have a demonstrative you prepared to try</p> <p>12 and illustrate how this search index operates?</p> <p>13 A I do.</p> <p>14 Q What's being illustrated here, sir?</p> <p>15 A Okay. So up here at the top we have the text box,</p> <p>16 which is the search query. I don't know where that</p> <p>17 popping is coming from.</p> <p>18 THE COURT: That's because you, like some</p> <p>19 witnesses, but not all, articulate your P's in a</p> <p>20 particular way at a particular length from the</p> <p>21 microphone, and there isn't anything that we've been</p> <p>22 able to do about it. And it's not your fault. It's a</p> <p>23 function of the way things are.</p> <p>24 THE WITNESS: Thank you, Your Honor.</p> <p>25 THE COURT: It's annoying, but --</p>	<p>713</p> <p>1 the user-defined field for manufacturer, like Dell or</p> <p>2 Hewlett-Packard or Gateway, for each of those I have</p> <p>3 pointers into the database that tell me where I will</p> <p>4 find a record, a product, in which the Dell keyword</p> <p>5 was located in the user-defined field for</p> <p>6 manufacturer.</p> <p>7 Likewise, for the item description fields, if I've</p> <p>8 got a database that contains keywords like keyboard</p> <p>9 and mouse and monitor, every time a descriptive term</p> <p>10 is found that is searchable for item description like</p> <p>11 keyboard, in this database there are pointers from the</p> <p>12 index into the database that say where that item is</p> <p>13 found.</p> <p>14 So the way this then works is when I put in Dell</p> <p>15 and monitor, the search engine goes to the search</p> <p>16 index, finds the keyword Dell, finds all of the places</p> <p>17 that the keyword Dell would appear in the database.</p> <p>18 In this case its locations are 10, 20, 25, 26, 27 and</p> <p>19 28.</p> <p>20 Then it would look for the next keyword in the</p> <p>21 query box. That's monitor. It would look up all of</p> <p>22 the places in the database where monitor appears as</p> <p>23 keyword. And that's 15, 16, 17, 19, 20, 21, 22, 23,</p> <p>24 25 and 27.</p> <p>25 Then having found where the records containing the</p>
<p>712</p> <p>1 THE WITNESS: I would have worried about that</p> <p>2 all night.</p> <p>3 THE COURT: Well, don't.</p> <p>4 MR. McDONALD: As long as he doesn't use the</p> <p>5 T sound for the rest of the testimony, it's fine.</p> <p>6 THE COURT: No, it's a P, generally.</p> <p>7 Does this have an exhibit number?</p> <p>8 MR. ROBERTSON: No, Your Honor. It's simply</p> <p>9 demonstrative.</p> <p>10 THE COURT: All right.</p> <p>11 A So we have our keywords at the top, our query</p> <p>12 text, and for this example I want to look for the</p> <p>13 keywords Dell and monitor. We'll assume that we have</p> <p>14 enabled at least two fields, two keyword fields to be</p> <p>15 searchable. One of them would be a user-defined field</p> <p>16 for the manufacturer. We haven't actually talked</p> <p>17 about user defined fields yet, but this is part of the</p> <p>18 Lawson product. So a user defined field or</p> <p>19 manufacturer has been determined to be searchable. It</p> <p>20 has been declared to be searchable. And a second</p> <p>21 field, the item description, which is one of the</p> <p>22 fields, one of the 29 fields supported by Lawson, that</p> <p>23 one has also been declared to be searchable.</p> <p>24 Now, after I do the search load and I build my</p> <p>25 index, then what I have is for each of the entries in</p>	<p>714</p> <p>1 keyword Dell are located and where the records</p> <p>2 containing the keyword monitor are located, then we do</p> <p>3 the intersection of those. That is, from those two</p> <p>4 lists of numbers, we find where the numbers are</p> <p>5 exactly the same.</p> <p>6 So in my example here, 25 and 27 are the database</p> <p>7 records that contain both the keywords Dell and</p> <p>8 monitor.</p> <p>9 So I go fetch records 25 and 27. And that's what</p> <p>10 I display to the user. So I don't search the whole</p> <p>11 database. I just the index to search selected parts.</p> <p>12 THE COURT: Mr. Robertson, what is this</p> <p>13 testimony related to? We had that at the beginning.</p> <p>14 Now we've had a lot of testimony, and I'm confused a</p> <p>15 little bit, and the jury may be, about what exactly</p> <p>16 this line relates to. Does it have to do with whether</p> <p>17 there's a search of a single catalog or not? Is that</p> <p>18 what we're still on?</p> <p>19 MR. ROBERTSON: No, Your Honor. There are</p> <p>20 some claims that say you have to search portions of</p> <p>21 the database or search among the selected catalogs.</p> <p>22 And so in order to search portions of the database,</p> <p>23 you need a search index. Lawson contends that the</p> <p>24 index is -- that the search searches the entire</p> <p>25 database all the time. So, therefore, they can't</p>

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<p>741</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 7, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>743</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, sir. 12 THE COURT: Good morning. Good morning, ladies and 13 gentlemen. I was informed by the clerk that you all needed to 14 know the procedure for asking questions, and if you have 15 questions, it's all right. 16 I think the best way to do this is for you to write 17 your question out and then send it up to Mr. Neal, and he'll 18 give it to me, because there's some kind of questions that, 19 perhaps, are better -- I will tell you immediately, I can't 20 answer that or we can't get into that. 21 Others -- and I found this to be the case most of the 22 time. Other questions are very helpful to the lawyers to have, 23 because if you have -- you are the ones who have to decide the 24 case, and if you have a question, they need to know it and need 25 to work out a way to get the information to you through their</p>
<p>742</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>744</p> <p>1 questions. 2 So if you feel like you have a question, you can 3 write them out, send them to me, and I'll take them and look at 4 them. Unless it's something that I can't allow, we'll work out 5 a way to get you the information that you need. 6 You all look like you're not as drained as you were 7 when you left yesterday afternoon. I feel the same way, so 8 let's get a fresh start. Let's go ahead, Mr. Robertson. 9 MR. ROBERTSON: Thank you, Your Honor. Good morning. 10 11 ALFRED C. WEAVER, 12 a witness, called by the plaintiff, having been previously 13 duly sworn, testified as follows: 14 DIRECT EXAMINATION 15 BY MR. ROBERTSON: (resuming) 16 Q Good morning, Dr. Weaver. 17 A Good morning, Mr. Robertson. 18 Q I'd like to start out looking at Plaintiff's Exhibit 19 Number 219, if I could, sir, in binder number five. Before we 20 get there, I have a few preliminary questions. 21 Do you know whether or not Lawson provides services to its 22 customers to assist them in importing vendor catalog data into 23 its item master? 24 A Yes, I do. There was witness testimony to that from the 25 customers.</p>

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<p style="text-align: right;">933</p> <p>1 THE COURT: Okay. Are you about ready to get</p> <p>2 back to where we were, sir?</p> <p>3 MR. GREER: Yes, sir.</p> <p>4 THE COURT: When you're ready, plunk your</p> <p>5 magic button.</p> <p>6 (The video deposition of Jeffrey P. Frank is</p> <p>7 resumed.)</p> <p>8 THE COURT: Looks like they are still working</p> <p>9 on the other matter. So do you have another witness?</p> <p>10 MR. ROBERTSON: Yes, Your Honor. I do have</p> <p>11 the Excel Spreadsheet was sent to Lawson on</p> <p>12 December 31 containing the excerpts of the Frank</p> <p>13 deposition that were to be played. The ones that</p> <p>14 are --</p> <p>15 THE COURT: Well, give it to them. They are</p> <p>16 working on it.</p> <p>17 MR. ROBERTSON: If they are working on it,</p> <p>18 fine, Your Honor. We don't need to delay and retain</p> <p>19 the jury.</p> <p>20 THE COURT: No, we're not going to hold the</p> <p>21 jury up for this. We're moving right along.</p> <p>22 MS. ALBERT: EPlus would call Hannah Raleigh.</p> <p>23 THE COURT: Where is Ms. Raleigh?</p> <p>24 MS. ALBERT: I understood she was here in</p> <p>25 person.</p>	<p style="text-align: right;">935</p> <p>1 please?</p> <p>2 A Hannah Edmundson Austin Raleigh.</p> <p>3 Q You are currently employed by Lawson with its</p> <p>4 professional services organization; is that correct?</p> <p>5 A That's correct.</p> <p>6 THE COURT: Can you hear all right, ladies</p> <p>7 and gentlemen?</p> <p>8 THE JURY: Yes.</p> <p>9 THE COURT: If you have any problems, let us</p> <p>10 know.</p> <p>11 MS. ALBERT: I have a little bit of a hoarse</p> <p>12 voice.</p> <p>13 THE COURT: No, I was talking about the</p> <p>14 witness.</p> <p>15 BY MS. ALBERT:</p> <p>16 Q Your current position at Lawson is one of practice</p> <p>17 director; is that correct?</p> <p>18 A That's correct.</p> <p>19 Q And your responsibilities as practice director are</p> <p>20 to oversee customer implementations of Lawson's</p> <p>21 products at new customers and significant</p> <p>22 implementations of current customers in the eastern</p> <p>23 region of the United States; is that correct?</p> <p>24 A That's right.</p> <p>25 Q And your responsibilities as practice director</p>
<p style="text-align: right;">934</p> <p style="text-align: center;">934</p> <p>1 THE COURT: Who is she?</p> <p>2 MS. ALBERT: She's an employee from Lawson.</p> <p>3 THE COURT: Okay.</p> <p>4 MS. ALBERT: Your Honor, if I could just have</p> <p>5 a brief moment. We have some exhibit binders for</p> <p>6 Ms. Raleigh and the Court.</p> <p>7 THE COURT: You're going to trust</p> <p>8 Mr. Robertson to handle that?</p> <p>9 MR. ROBERTSON: We're all in trouble then.</p> <p>10 THE COURT: Here he comes. Oh, no.</p> <p>11 MS. ALBERT: It's not quite as daunting as it</p> <p>12 might appear. There are just a couple of voluminous</p> <p>13 documents. I think there are two binders total.</p> <p>14 THE COURT: I wonder if your cap and trade</p> <p>15 bill would include deductions for paper killing for</p> <p>16 law firms. Tree killing.</p> <p>17 Is that for me? Thank you for my present.</p> <p>18 Thank you, sir.</p> <p>19 All right.</p> <p>20 HANNAH RALEIGH, called by the Plaintiff, first</p> <p>21 being duly sworn, testified as follows:</p> <p>22</p> <p>23 DIRECT EXAMINATION</p> <p>24 BY MS. ALBERT:</p> <p>25 Q Would you state your full name for the record,</p>	<p style="text-align: right;">936</p> <p style="text-align: center;">RALEIGH - DIRECT 936</p> <p>1 include overseeing customer implementations of</p> <p>2 Lawson's procurement products; is that correct?</p> <p>3 A That's correct.</p> <p>4 Q Now, Lawson's Professional Services Organization</p> <p>5 has roughly 1500 employees worldwide; is that correct?</p> <p>6 A That's roughly correct, sure.</p> <p>7 Q Isn't it true that 90 percent or more of Lawson's</p> <p>8 customers engage Lawson Professional Services at some</p> <p>9 time for some form of assistance over the course of</p> <p>10 their relationship with Lawson?</p> <p>11 A Yes, over the course of their full use of the</p> <p>12 products, yes.</p> <p>13 Q Now, among the different types of services</p> <p>14 provided by Lawson's Professional Services</p> <p>15 Organization to Lawson's customers, those services</p> <p>16 would include training services; is that correct?</p> <p>17 A Absolutely.</p> <p>18 Q And Lawson's Professional Services Organization</p> <p>19 also provides services that are referred to as project</p> <p>20 management services to Lawson's customers; is that</p> <p>21 correct?</p> <p>22 A Yes, we do.</p> <p>23 Q Lawson's Professional Services Organization also</p> <p>24 services that are referred to as implementation</p> <p>25 consulting services; is that correct?</p>

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<p style="text-align: right;">937</p> <p style="text-align: center;">RALEIGH - DIRECT 937</p> <p>1 A That's correct.</p> <p>2 Q And Lawson's Professional Services Organization</p> <p>3 also provides services that are referred to as upgrade</p> <p>4 consulting services; is that correct?</p> <p>5 A That's correct.</p> <p>6 Q And those upgrade services would involve assisting</p> <p>7 the clients with upgrading from one version of a</p> <p>8 Lawson system to the next released version of that</p> <p>9 system; is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Lawson's Professional Services Organization also</p> <p>12 provides technical development services to customers</p> <p>13 such as interface development and customization</p> <p>14 development services; is that correct?</p> <p>15 A We do at times, yes.</p> <p>16 Q Lawson's Professional Services Organization also</p> <p>17 offers services to Lawson's customers that are</p> <p>18 referred to as learning services; is that correct?</p> <p>19 A That's true.</p> <p>20 Q Among the learning services that Lawson's</p> <p>21 Professional Services Organization provides to</p> <p>22 Lawson's customers would be public instructor led</p> <p>23 training in one of Lawson's offices or on site</p> <p>24 instructor led training for a specific customer at</p> <p>25 their site; is that correct?</p>	<p style="text-align: right;">939</p> <p style="text-align: center;">RALEIGH - DIRECT 939</p> <p>1 customers with -- and I'm reading from the first line</p> <p>2 there. Instructions on the key setup components and</p> <p>3 processing functionality of the inventory control</p> <p>4 application; is that correct?</p> <p>5 A That's correct.</p> <p>6 Q And among the training included in that course</p> <p>7 would be, in following along with the second sentence,</p> <p>8 instructions on the key setup components and</p> <p>9 processing functionality -- excuse me, instructions</p> <p>10 concerning how to set up the item master associated</p> <p>11 with the inventory control application; is that</p> <p>12 correct?</p> <p>13 A Yes, that's right.</p> <p>14 Q Turn to page 6 of that exhibit, please. Do you</p> <p>15 see on that page there's a course entitled,</p> <p>16 Requisition Self Service 8.1-9.0?</p> <p>17 A Yes.</p> <p>18 Q Lawson also offers a course entitled, Requisition</p> <p>19 Self Service 8.1/9.0, which introduces major features</p> <p>20 of requisition self service such as requisition</p> <p>21 approvals, receiving, and the shopping experience</p> <p>22 which includes searching the catalog for items, using</p> <p>23 shopping lists, ordering specials or services, and</p> <p>24 ordering by categories; is that correct?</p> <p>25 A Yes.</p>
<p style="text-align: right;">938</p> <p style="text-align: center;">RALEIGH - DIRECT 938</p> <p>1 A Sure.</p> <p>2 MS. ALBERT: Mike, if you would, could we</p> <p>3 have Plaintiff's Exhibit 202.</p> <p>4 Q And, Ms. Raleigh, that is in Volume I of your</p> <p>5 binders.</p> <p>6 THE COURT: Before you go anywhere, what was</p> <p>7 the exhibit number for that Frank deposition? You're</p> <p>8 going to have to put it in the record because the</p> <p>9 court reporter wasn't taking it down. Just look it up</p> <p>10 and tell me later.</p> <p>11 Go ahead, Ms. Albert.</p> <p>12 Q Do you have Plaintiff's Exhibit 202?</p> <p>13 A I do.</p> <p>14 Q Is Plaintiff's Exhibit 202 a catalog of online</p> <p>15 courses that Lawson offers to its customers?</p> <p>16 A Yeah. It's a catalog that was published at a</p> <p>17 certain point in time, but yes.</p> <p>18 Q Can you turn, please, to page 5 of that exhibit,</p> <p>19 and the Bates number on that page ends with 4027?</p> <p>20 A I'm there.</p> <p>21 Q Do you see at the top of the page there's a course</p> <p>22 entitled inventory control 8.1/9.0 X?</p> <p>23 A I do.</p> <p>24 Q And Lawson offers this two-day course entitled</p> <p>25 Inventory Control 8.1/9.0 X that provides its</p>	<p style="text-align: right;">940</p> <p style="text-align: center;">RALEIGH - DIRECT 940</p> <p>1 Q In this course, Lawson enables its customers to</p> <p>2 have an experience using an actual Lawson training</p> <p>3 system that would have the requisition self service</p> <p>4 application installed; is that correct?</p> <p>5 A Yes.</p> <p>6 Q I believe I'm done with that document.</p> <p>7 A Okay.</p> <p>8 Q Lawson's Professional Services Organization also</p> <p>9 provides services to Lawson's customers that consist</p> <p>10 of installing the Lawson software on the customers'</p> <p>11 hardware; is that correct?</p> <p>12 A Yes.</p> <p>13 Q And you previously mentioned that Lawson provides</p> <p>14 implementation services to its customers. Do you</p> <p>15 recall that?</p> <p>16 A Yes.</p> <p>17 Q Among the implementation services that Lawson</p> <p>18 provides to its customers, those services would</p> <p>19 include assistance with designing the configuration of</p> <p>20 the Lawson software to meet the customer's business</p> <p>21 requirements; is that correct?</p> <p>22 A Yes.</p> <p>23 Q Also included among the implementation services</p> <p>24 that Lawson would provide to its customers would be</p> <p>25 assisting the customer with developing test scripts</p>

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<p style="text-align: right;">941</p> <p style="text-align: center;">RALEIGH - DIRECT 941</p> <p>1 and assisting the customer with testing the software</p> <p>2 on that equipment; is that correct?</p> <p>3 A Yes, we assist with customer with all the aspects</p> <p>4 of implementing the software and those would be</p> <p>5 included.</p> <p>6 Q Among the aspects included with implementation</p> <p>7 would be all aspects up to and including bringing a</p> <p>8 system live into actual production operation; is that</p> <p>9 correct?</p> <p>10 A That's right.</p> <p>11 Q Lawson also provides -- when a customer's system</p> <p>12 goes live, that means it's actually operational and in</p> <p>13 an actual production environment to perform the</p> <p>14 procurement process; is that correct?</p> <p>15 A We hope so, yes.</p> <p>16 Q Now, also included among the services that Lawson</p> <p>17 would provide to its customers, Lawson can provide</p> <p>18 hosting services or Lawson physically hosts the</p> <p>19 customer's system in space that Lawson owns if the</p> <p>20 customer so desires; is that correct?</p> <p>21 A We can.</p> <p>22 Q And Lawson also provides services to its customers</p> <p>23 to support converting existing systems and conversion</p> <p>24 of data from those existing systems into the proper</p> <p>25 format for importation into a Lawson system; is that</p>	<p style="text-align: right;">943</p> <p style="text-align: center;">RALEIGH - DIRECT 943</p> <p>1 customers on data migration requirements and data</p> <p>2 mapping to put this data that's imported from a prior</p> <p>3 system into a Lawson system; is that correct?</p> <p>4 A That's right.</p> <p>5 Q And Lawson Software includes within the software</p> <p>6 import and export utilities that can be utilized for</p> <p>7 this data conversion process; is that correct?</p> <p>8 A That's correct.</p> <p>9 Q As part of the data conversion effort, Lawson's</p> <p>10 Professional Services Organization will actually</p> <p>11 convert item master data from a client's preexisting</p> <p>12 system to a format for use in the Lawson procurement</p> <p>13 system; is that correct?</p> <p>14 A Yes. When requested to help them with that, yes.</p> <p>15 Q Have you actually been involved in implementation</p> <p>16 projects where the customer has so requested Lawson to</p> <p>17 perform data conversion efforts?</p> <p>18 A Yes, I have been involved in some projects where</p> <p>19 the customer needed assistance from the Lawson team to</p> <p>20 do various elements of that conversion process.</p> <p>21 Sometimes some steps and sometimes other systems, but</p> <p>22 certainly I've been involved in projects where we</p> <p>23 participate in that process.</p> <p>24 MS. ALBERT: Mike, if we could have</p> <p>25 Plaintiff's Exhibit 216. And, Ms. Raleigh, that's in</p>
<p style="text-align: right;">942</p> <p style="text-align: center;">RALEIGH - DIRECT 942</p> <p>1 correct?</p> <p>2 A Yes. All of our customers are importing from a</p> <p>3 previous system, so yes.</p> <p>4 THE COURT: Excuse me just a minute. I don't</p> <p>5 know that any of us over here know what hosting means.</p> <p>6 The way it's been explained sort of leads me to the</p> <p>7 impression that Lawson has everything on its computer</p> <p>8 system, but if I'm the customer, I can be in Timbuktu</p> <p>9 and just use my computer, and I go through you to get</p> <p>10 what I want. Is that basically right or wrong?</p> <p>11 THE WITNESS: The only clarification I would</p> <p>12 make to that is that the system is actually still the</p> <p>13 customer's system. So it is their system. It is</p> <p>14 physically housed in a Lawson-owned or leased</p> <p>15 facility. Obviously, we take care of keeping the</p> <p>16 lights on and the electricity and those of things, but</p> <p>17 the system can be accessed, you're correct, from</p> <p>18 Timbuktu or anywhere else in the world using Internet</p> <p>19 protocols.</p> <p>20 Q And Lawson will assist its customer with</p> <p>21 implementing those systems that it hosts in its own</p> <p>22 facilities among other services; is that correct?</p> <p>23 A Yes. It makes no difference where that hardware</p> <p>24 lives.</p> <p>25 Q Lawson also provides workshops to educate its</p>	<p style="text-align: right;">944</p> <p style="text-align: center;">RALEIGH - DIRECT 944</p> <p>1 Volume II of your binders.</p> <p>2 Q Are you there?</p> <p>3 A I'm here.</p> <p>4 Q Ms. Raleigh, is this a copy of Lawson's statement</p> <p>5 of work for system implementation it performed for the</p> <p>6 Public Health Trust Jackson Health System?</p> <p>7 A Yes, it is.</p> <p>8 Q And you were Lawson's practice director that</p> <p>9 oversees the implementation of Lawson's system for</p> <p>10 this client; is that correct?</p> <p>11 A That's correct.</p> <p>12 Q And Lawson received the award of the contract for</p> <p>13 this particular implementation project; is that</p> <p>14 correct?</p> <p>15 A That's right.</p> <p>16 MS. ALBERT: Mike, if you could turn to page</p> <p>17 15 of the exhibit and the Bates number on that page</p> <p>18 ends with 5374.</p> <p>19 Q Do you see the heading on that page entitled "Data</p> <p>20 migration and conversion scope"?</p> <p>21 A I do.</p> <p>22 Q Below that there's an item, 3.5.1 that refers to</p> <p>23 master file and configuration table value builds, do</p> <p>24 you see that?</p> <p>25 A I do.</p>

<p style="text-align: right;">945</p> <p style="text-align: center;">RALEIGH - DIRECT 945</p> <p>1 Q And the text below that indicates that the data to</p> <p>2 be converted will be identified during the design</p> <p>3 phase. The Lawson functional consultants will provide</p> <p>4 assistance with data mapping support, data loading</p> <p>5 support, and executing uploads via Lawson add-ins tool</p> <p>6 to build the required master files and</p> <p>7 configuration/setup table values. Do you see that?</p> <p>8 A I do.</p> <p>9 Q And the Lawson professional consultants did</p> <p>10 actually provide this assistance to Jackson Health</p> <p>11 System as indicated in the statement of work; is that</p> <p>12 correct?</p> <p>13 A We did.</p> <p>14 Q And in the second paragraph below that, the second</p> <p>15 sentence of that paragraph, indicates that the</p> <p>16 customer will have access to Lawson's conversion</p> <p>17 manuals and file layouts. Do you see that?</p> <p>18 A I do.</p> <p>19 Q Did Lawson actually provide the customer Jackson</p> <p>20 with the Lawson conversion manuals and file layout as</p> <p>21 indicated in the statement of work?</p> <p>22 A We did. I want to clarify that this entire</p> <p>23 section does refer to all of the aspects of the</p> <p>24 implementation, not purely the procurement</p> <p>25 implementation. So our involvement over the course of</p>	<p style="text-align: right;">947</p> <p style="text-align: center;">RALEIGH - DIRECT 947</p> <p>1 during the implementation project; is that correct?</p> <p>2 A That's right.</p> <p>3 Q The second task in the table indicates that Lawson</p> <p>4 would be responsibility to provide cross functional</p> <p>5 workshops to define the data migration process and</p> <p>6 mapping required for Jackson. Lawson did actually</p> <p>7 provide such a cross functional workshop to define the</p> <p>8 data migration process and mapping for Jackson Health</p> <p>9 System, didn't it?</p> <p>10 A We did.</p> <p>11 Q And the next activity below that in the table</p> <p>12 relates to migration strategy and process description.</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q And Lawson also provided Jackson Health System</p> <p>16 with migration strategy and process description,</p> <p>17 correct?</p> <p>18 A We did.</p> <p>19 Q And if you proceed down, I believe it's the sixth</p> <p>20 task in the chart, it's identified as training and</p> <p>21 data migration tools. Do you see that?</p> <p>22 A Yeah, I do.</p> <p>23 Q And the Lawson personnel delivered standard</p> <p>24 training and education courses relating to data</p> <p>25 migration tools to Jackson personnel; isn't that true?</p>
<p style="text-align: right;">946</p> <p style="text-align: center;">RALEIGH - DIRECT 946</p> <p>1 the project may have, you know, been different</p> <p>2 depending on which part of the system we were building</p> <p>3 at the time. So there could be differences, but yes.</p> <p>4 Q But this particular implementation project did</p> <p>5 include the procurement modules; is that correct?</p> <p>6 A It did.</p> <p>7 Q Continuing on with that second sentence in the</p> <p>8 second paragraph, it indicates that conversion work</p> <p>9 session will be conducted to review the Lawson's</p> <p>10 standard conversion programs and conversion process.</p> <p>11 Do you see that?</p> <p>12 A I do.</p> <p>13 Q And Lawson did provide that conversion work</p> <p>14 session to review the Lawson standard conversion</p> <p>15 programs and conversion process for Jackson, correct?</p> <p>16 A Absolutely.</p> <p>17 Q Can you turn to page 16 of the exhibit and the</p> <p>18 Bates number on that page ends with 375.</p> <p>19 A Yes, I'm there.</p> <p>20 Q That's table on this page entitled</p> <p>21 "Responsibilities for master file and configuration</p> <p>22 table value builds," do you see that?</p> <p>23 A I do.</p> <p>24 Q The table on this page relates to which party is</p> <p>25 going to have responsibility for particular tasks</p>	<p style="text-align: right;">948</p> <p style="text-align: center;">RALEIGH - DIRECT 948</p> <p>1 A We did. I would probably refer to it more as</p> <p>2 knowledge transfer than standard training or</p> <p>3 education. It was less formal than it maybe sounds</p> <p>4 here, but we did help them understand those tools.</p> <p>5 Q And the last task on that page is identified as</p> <p>6 test load sample data, do you see that?</p> <p>7 A I do.</p> <p>8 Q It indicates that the client would be responsible</p> <p>9 for providing sample data and then Lawson is</p> <p>10 responsible for executing the load of the test data.</p> <p>11 Lawson, in fact, executed the load of the test data</p> <p>12 for Jackson in connection with this project; is that</p> <p>13 correct?</p> <p>14 A Yes, we did.</p> <p>15 Q Can you turn to the next page of the exhibit.</p> <p>16 That Bates No. on that page ends with 376?</p> <p>17 A I'm there.</p> <p>18 Q The first task on this page is identified as</p> <p>19 production data load. Do you see that?</p> <p>20 A I do.</p> <p>21 Q And the table indicates that Lawson was</p> <p>22 responsible for executing the load of the test data</p> <p>23 for Jackson. Lawson did in fact, load the production</p> <p>24 data for Jackson in connection with this</p> <p>25 implementation project, correct?</p>

<p style="text-align: right;">949</p> <p style="text-align: center;">RALEIGH - DIRECT 949</p> <p>1 A We did. I believe we did.</p> <p>2 Q And continuing down the page. Lawson also</p> <p>3 conducted a full migration system test for Jackson in</p> <p>4 connection with this project; is that correct?</p> <p>5 A We did.</p> <p>6 Q And Lawson was also responsible for the live data</p> <p>7 migration for Jackson system, correct?</p> <p>8 A We were.</p> <p>9 Q If you look down below that table on the same page</p> <p>10 there's another table, table 3.5.1.1.1, do you see</p> <p>11 that?</p> <p>12 A I do.</p> <p>13 Q And the title on that table is master file in</p> <p>14 configuration table value build and scope; do you see</p> <p>15 that?</p> <p>16 A I do.</p> <p>17 Q And the table on this page identifies the master</p> <p>18 files and configuration tables that were included</p> <p>19 within the scope of the implementation project that</p> <p>20 Lawson conducted for Jackson; is that correct?</p> <p>21 A Yes.</p> <p>22 Q So the data conversions that were included within</p> <p>23 the scope of the project that Lawson performed for</p> <p>24 Jackson included the vendor master, the item master</p> <p>25 and the vendor catalog; is that correct?</p>	<p style="text-align: right;">951</p> <p style="text-align: center;">RALEIGH - DIRECT 951</p> <p>1 there for item master.</p> <p>2 Q Lawson also provides maintenance and support</p> <p>3 services to its customers; is that correct?</p> <p>4 A We do.</p> <p>5 MS. ALBERT: Mike, if you could, could you</p> <p>6 put up Plaintiff's Exhibit 208.</p> <p>7 Q And, Ms. Raleigh, that's in Volume I of your</p> <p>8 binders.</p> <p>9 A I'm there.</p> <p>10 Q Plaintiff's Exhibit 208, this is a handbook that</p> <p>11 Lawson publishes to its customers to tell them about</p> <p>12 the types of support services that Lawson offers; is</p> <p>13 that correct?</p> <p>14 A That's correct.</p> <p>15 Q Could you go to page 17 of the exhibit, and the</p> <p>16 Bates number on that page ends with 050?</p> <p>17 A I'm there.</p> <p>18 Q Now, with reference to the chart on that page, it</p> <p>19 shows that Lawson has four different levels of support</p> <p>20 services; is that correct?</p> <p>21 A That's correct.</p> <p>22 Q There's a bronze level of support service.</p> <p>23 There's a base maintenance support level; is that</p> <p>24 accurate?</p> <p>25 A That's accurate.</p>
<p style="text-align: right;">950</p> <p style="text-align: center;">RALEIGH - DIRECT 950</p> <p>1 A I would agree with the vendor master and the item</p> <p>2 master, but if you note, there's a bolded Lawson</p> <p>3 response next to the vendor catalog specification.</p> <p>4 I'll also note that the system that was being convert</p> <p>5 from was Eclipsys, right? So the terminology used</p> <p>6 here to describe the data is really more relevant to</p> <p>7 the system from which the data was coming.</p> <p>8 But if you note the Lawson response related to</p> <p>9 catalog, vendor catalog, it's really more that that is</p> <p>10 purely item master data. So we really included the</p> <p>11 item master data that they may be referring to based</p> <p>12 on Eclipsys' terminology of the vendor catalog.</p> <p>13 Q If lawson provided a response to Jackson here that</p> <p>14 said catalog information is a part of Lawson's item</p> <p>15 master, it wouldn't be converted as part of conversion</p> <p>16 item No. 22 above; is that correct?</p> <p>17 A Based on the definition of catalog information</p> <p>18 that, I believe, was related to Eclipsys' definition</p> <p>19 of vendor catalog information.</p> <p>20 Q But Lawson told Jackson that the vendor catalog</p> <p>21 data in Jackson's prior system would be included as</p> <p>22 part of the data that would be converted in connection</p> <p>23 with this project, right?</p> <p>24 A Right. Essentially, we told them that that is</p> <p>25 item master data, so it would be included under item 2</p>	<p style="text-align: right;">952</p> <p style="text-align: center;">RALEIGH - DIRECT 952</p> <p>1 Q There's a silver level of support services.</p> <p>2 That's an enhanced level of support; is that correct?</p> <p>3 A That's right.</p> <p>4 Q And then there's a gold level of support services</p> <p>5 that's entitled, Application Management; is that</p> <p>6 accurate?</p> <p>7 A It incorporates Application Management in addition</p> <p>8 to others, yes.</p> <p>9 Q Well, as we're proceeding up this chart, for each</p> <p>10 successive level of support, Lawson would provide all</p> <p>11 of the support at the level beneath that level plus</p> <p>12 the additional support listed for the level that it</p> <p>13 relates to; is that accurate?</p> <p>14 A That's accurate.</p> <p>15 Q Then there's a top level of support entitled,</p> <p>16 Platinum that relates to hosted solutions; is that</p> <p>17 correct?</p> <p>18 A That's right.</p> <p>19 Q So some services that would fall within the base</p> <p>20 or bronze level of maintenance services that Lawson's</p> <p>21 provides to its customers would include providing them</p> <p>22 with upgrades to licensed products; is that accurate?</p> <p>23 A That's true.</p> <p>24 Q The enhanced level of support service that Lawson</p> <p>25 provides to its customers at the silver level of</p>

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<p style="text-align: right;">990</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 11, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p style="text-align: right;">992</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are, Your Honor. 12 THE COURT: What did you all need to talk about? 13 MS. STOLL-DeBELL: We actually resolved it, Your 14 Honor, between the time we that mentioned -- 15 THE COURT: Tell them to bring the jury in. What do 16 we have this morning? 17 MR. ROBERTSON: The first witness we're calling this 18 morning is Mr. Keith Lohkamp, Your Honor. He's a Lawson 19 employee. I have a number of binders associated with the 20 witnesses this morning. I want to make sure my paralegal -- 21 oh. 22 23 (Jury in.) 24 25 THE COURT: Good morning, ladies and gentlemen. All</p>
<p style="text-align: right;">991</p> <p style="text-align: center;">991</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">993</p> <p style="text-align: center;">993</p> <p>1 right, we have a witness. Next witness. 2 MR. ROBERTSON: Mr. Keith Lohkamp. 3 THE COURT: All right, Keith Lohkamp. 4 5 KEITH LOHKAMP, 6 a witness, called by the plaintiff, having been first duly 7 sworn, testified as follows: 8 DIRECT EXAMINATION 9 BY MR. ROBERTSON: 10 Q Good morning, Mr. Lohkamp. 11 A Good morning. 12 Q Mr. Lohkamp, you are a Lawson Software employee; correct? 13 A Yes, I am. 14 Q And you are a product strategist for supply chain 15 management; correct? 16 A Yes. 17 THE COURT: Can we get the witness to spell his last. 18 Q Can you please spell your last name, sir, for the record. 19 A It's L-o-h-k-a-m-p. 20 Q Can you explain to the jury essentially what supply chain 21 management is? 22 A Supply chain management involves the procurement of goods 23 and services and the management of the inventory related to 24 managing those goods. It also includes, can include the sell 25 side, so selling those goods and services as well.</p>

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<p style="text-align: right;">1154</p> <p>Lohkamp - Redirect 1154</p> <p>1 Dale Christopherson.</p> <p>2 THE COURT: How long is this going to take?</p> <p>3 MR. ROBERTSON: Your Honor, I'm trying to cut it back</p> <p>4 considerably. I think I'd be less than 45 minutes.</p> <p>5 THE COURT: Mr. Niemeyer, how long is his examination</p> <p>6 going to be?</p> <p>7 MR. ROBERTSON: Less than an hour.</p> <p>8 THE COURT: Let's go. There was a lot of stuff that</p> <p>9 that could have been excised from that.</p> <p>10 MR. ROBERTSON: I tried to limit it, Your Honor, but</p> <p>11 both parties get to cross-designate, so...</p> <p>12 THE COURT: 611 is in effect in full force.</p> <p>13</p> <p>14 DALE CHRISTOPHERSON,</p> <p>15 a witness, called by the plaintiff, having been first duly</p> <p>16 sworn, testified as follows:</p> <p>17</p> <p>18 MR. ROBERTSON: May I proceed, Your Honor?</p> <p>19 THE COURT: Please.</p> <p>20</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MR. ROBERTSON:</p> <p>23 Q Will you state your full name for the record, sir?</p> <p>24 A Dale Arnold Christopherson.</p> <p>25 Q And you are currently the director of development at</p>	<p style="text-align: right;">1156</p> <p>1 nine plus you have to do that; isn't that right?</p> <p>2 A In nine plus?</p> <p>3 Q Any version nine and above?</p> <p>4 A Oh, any version nine and above, that's correct.</p> <p>5 Q There are several versions of this software we've been</p> <p>6 talking about; correct?</p> <p>7 A Yes, there are.</p> <p>8 Q And there's a separate license fee associated with Lawson</p> <p>9 system foundation; is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Now, there's been a lot of discussion about these vendor</p> <p>12 catalogs. A customer can import a vendor catalog into the item</p> <p>13 master of the Lawson system; isn't that right?</p> <p>14 A They can go basically through a three-step process, yes.</p> <p>15 Q And you are aware also of this UNSPSC we've been talking</p> <p>16 about?</p> <p>17 A I certainly am.</p> <p>18 Q So isn't it true that you can use the UNSPSC to find items</p> <p>19 from different vendors that were all cross-referenced using the</p> <p>20 same product category?</p> <p>21 A Let me think about what you are really saying there.</p> <p>22 Could you restate that?</p> <p>23 Q Sure. Isn't it true that a user of the Lawson system that</p> <p>24 has this UNSPSC capability can find items from different</p> <p>25 vendors that were all cross-referenced to the same product</p>
<p style="text-align: right;">1155</p> <p>1 Lawson Software; correct?</p> <p>2 A That's correct.</p> <p>3 Q Then in your role as the director of development, you have</p> <p>4 responsibilities for these software modules that we've been</p> <p>5 talking about, Lawson requisition self-service, Lawson</p> <p>6 procurement punchout, Lawson purchase order, Lawson</p> <p>7 requisitions, Lawson inventory control, and Lawson EDI;</p> <p>8 correct?</p> <p>9 A Those are some of the many that I do have under my</p> <p>10 control, yes.</p> <p>11 Q You are familiar also with the Lawson system foundation;</p> <p>12 is that right?</p> <p>13 A Depends on how deep you want to go into it, but, yes, I am</p> <p>14 familiar with it at some length.</p> <p>15 Q You were asked in your deposition whether Lawson system</p> <p>16 foundation is a technology layer that sits below these current</p> <p>17 applications we've been talking about. Do you recall that?</p> <p>18 A I certainly do.</p> <p>19 Q You said it was?</p> <p>20 A Yes, it was and still is.</p> <p>21 Q And so isn't it true now that all customers of Lawson are</p> <p>22 required to license the Lawson system foundation in order to</p> <p>23 use the current version of the Lawson applications?</p> <p>24 A That's correct.</p> <p>25 Q And in this procurement version nine plus, any version</p>	<p style="text-align: right;">1157</p> <p>1 category?</p> <p>2 A That's correct, yes.</p> <p>3 Q The shopping cart in Lawson requisition self-service can</p> <p>4 be dynamically built from results of conducting searches in the</p> <p>5 item master; isn't that right?</p> <p>6 A That is correct.</p> <p>7 Q And it's also true that the shopping cart can also be</p> <p>8 dynamically built using the results of searches in the vendor</p> <p>9 punchout catalogs; right?</p> <p>10 A That is also correct.</p> <p>11 Q And when the user clicks a checkout in the items in your</p> <p>12 shopping cart, they are moved into the requisition system, and</p> <p>13 an actual requisition is created; isn't that right?</p> <p>14 A I would actually define that slightly different.</p> <p>15 Q All right. Do you recall giving a deposition in this</p> <p>16 case?</p> <p>17 A I certainly do.</p> <p>18 Q And you were under oath?</p> <p>19 A Uh-huh.</p> <p>20 Q I believe you have your deposition transcript. It should</p> <p>21 be in the first volume.</p> <p>22 A Yep.</p> <p>23 Q Could you go to page 77? Excuse me. I misspoke. 177.</p> <p>24 A 177?</p> <p>25 Q Yes, sir.</p>

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<p>1158</p> <p>1 A Okay. I'm not there yet.</p> <p>2 Q Okay, take your time.</p> <p>3 A Okay, 177.</p> <p>4 Q Starting at about line 18?</p> <p>5 A Starting with question, and then on the right-hand screen?</p> <p>6 Q Let me read the question for you.</p> <p>7 Question: And then on the right-hand screen in the card,</p> <p>8 here you have four items that have been included in your</p> <p>9 shopping cart. What happens to that when you click checkout?</p> <p>10 Your answer: When you click checkout, then it would move</p> <p>11 that information into the requisition system and actually</p> <p>12 create a requisition.</p> <p>13 Did you give that answer to that question at that time?</p> <p>14 A I certainly did.</p> <p>15 Q Okay. Thank you. Once a requisition is approved, the</p> <p>16 requisition is released and then transferred to the purchase</p> <p>17 order system; correct?</p> <p>18 A That's correct, after it's been approved.</p> <p>19 Q Talking just now about procurement punchout, when users</p> <p>20 have filled their shopping carts, virtually speaking, and</p> <p>21 checked out from the vendor website using the Lawson</p> <p>22 procurement punchout, the chosen items and their prices are</p> <p>23 returned to the Lawson server and a requisition is created</p> <p>24 using the Lawson requisition self-service application; correct?</p> <p>25 A Can you state that again? The second half of it basically</p>	<p>1160</p> <p>1 multi-vendor catalog capability is a punchout trading partner</p> <p>2 of Lawson; correct?</p> <p>3 A That's correct. They are on the list, yes.</p> <p>4 Q It's an accurate statement to say that if Lawson could not</p> <p>5 market a requisition module, it could not effectively compete</p> <p>6 in the supply chain management product market?</p> <p>7 A I would say that that would be an accurate statement, yes.</p> <p>8 Q It's also accurate to say if Lawson could not offer a</p> <p>9 purchase order module, Lawson could not effectively compete in</p> <p>10 the supply chain management product market?</p> <p>11 A That would also be correct.</p> <p>12 Q You've heard a lot of talk about the implementation and</p> <p>13 installation services that Lawson offers. I just want to be</p> <p>14 clear that Lawson will provide implementation services to</p> <p>15 assist its customers with importing vendor catalog data into</p> <p>16 the item master.</p> <p>17 A I didn't hear a question in that, sir.</p> <p>18 Q Let me restate it then. Perhaps I misspoke. Is it true</p> <p>19 that Lawson provides implementation services to assist its</p> <p>20 customers with importing vendor catalog data into the item</p> <p>21 master?</p> <p>22 A If the customer so chooses and wants that service, yes, we</p> <p>23 do.</p> <p>24 Q So for most situations where a customer licenses the</p> <p>25 supply chain management suite or the procurement modules we've</p>
<p>1159</p> <p>1 is where I lost you. ^ you check out at the customer, not the</p> <p>2 customer but the vendor site and then it was at that point</p> <p>3 where I got lost.</p> <p>4 Q Let me start over. Let's hear the whole question. When</p> <p>5 users have filled their shopping carts, virtually speaking, and</p> <p>6 checked out from the vendor website using Lawson procurement</p> <p>7 punchout, the chosen items and their price are then returned to</p> <p>8 the Lawson server, and a requisition is created using the</p> <p>9 Lawson requisition self-service application; correct?</p> <p>10 A That's correct.</p> <p>11 Q Isn't it true that the current version of the Lawson</p> <p>12 procurement punchout includes the capability to punch out to</p> <p>13 multi-vendor catalogs?</p> <p>14 A That's correct.</p> <p>15 Q One of those examples of a site that you can go that is a</p> <p>16 multi-catalog vendor -- excuse me, multi-vendor catalog, is</p> <p>17 SciQuest; correct?</p> <p>18 A That's correct.</p> <p>19 Q Another example of a multi-vendor catalog site that's</p> <p>20 available for the punchout procurement is an organization known</p> <p>21 as GHX; correct?</p> <p>22 A That is correct.</p> <p>23 Q That stands for Global Healthcare Exchange?</p> <p>24 A That's correct.</p> <p>25 Q And Global Healthcare Exchange that provides this</p>	<p>1161</p> <p>1 been talking about in supply chain management, Lawson</p> <p>2 professional services is going to provide the actual</p> <p>3 installation and implementation services for that system;</p> <p>4 correct?</p> <p>5 A That's correct, yes.</p> <p>6 Q All existing Lawson customers today are under maintenance</p> <p>7 contracts with Lawson; correct?</p> <p>8 A That's correct.</p> <p>9 Q So all of the supply chain -- excuse me. All of the</p> <p>10 supply -- let me restate that. All of the S3 procurement</p> <p>11 products that are under contract today with Lawson customers,</p> <p>12 they have maintenance contracts; is that right?</p> <p>13 A Could you restate that?</p> <p>14 Q Yeah. I'm sorry. It was a bad question. With respect to</p> <p>15 the Lawson S3 procurement product that's at issue here, any</p> <p>16 customer that has that product is under an existing maintenance</p> <p>17 contract?</p> <p>18 A That's correct.</p> <p>19 Q There's been a lot of talk about this RFP process, and I</p> <p>20 don't want to go through it again in detail, certainly, but</p> <p>21 there is a standard set of answers for those common questions</p> <p>22 that customers have about the S3 procurement product; correct?</p> <p>23 A That is correct, yes.</p> <p>24 Q I think if you'll look in your book to Exhibit 117.</p> <p>25 A Okay.</p>

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<p>1188</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 12, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1190</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. You said you wanted to see me 13 before the jury comes in. 14 MR. McDONALD: Yeah, there's basically three issues 15 we wanted to raise. 16 THE COURT: The court reporters always can hear 17 better if you come to the lectern. 18 MR. McDONALD: There's basically three issues that we 19 wanted to raise this morning. One is our third witness in our 20 case that we start today is Ms. Raleigh. 21 THE COURT: Third witness in what? 22 MR. McDONALD: In our case when we start presenting 23 our case today. We have Mr. Richard Lawson first, Mr. 24 Christopherson second, and then Hannah Raleigh was supposed to 25 come back and be third today.</p>
<p>1189</p> <p>1189</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1191</p> <p>1191</p> <p>1 She was supposed to be back last night from New York, 2 and New York is getting hammered real bad by this blizzard. 3 She's trying to get another flight, but her flight is not going 4 to get her here until after the trial day is over today. So 5 we've been trying to work something out with ePlus about what 6 we would do next because we haven't disclosed any exhibits or 7 anything for the next witness. 8 THE COURT: Just call the next witness, the expert or 9 whoever you've got here. There's no magic to the order of 10 putting people on. 11 MR. McDONALD: The next witness we would have 12 actually here is Mr. Lohkamp, calling him back. 13 THE COURT: Good. 14 MR. McDONALD: That's fine. They haven't had a 15 chance to get ready for their cross-examination. 16 THE COURT: They'll be ready. They knew basically 17 what you were going to do anyway. They're not going to do it 18 on your cross-examination; they were going to do redirect, so 19 we're going to reverse things. 20 MR. McDONALD: We do have a deposition of Ms. 21 O'Loughlin on the RIMS prior art issue that we can move up in 22 the order. 23 THE COURT: Is that carefully edited to eliminate the 24 trash? 25 MR. McDONALD: That's being worked on as we speak,</p>

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<p>1244</p> <p>1 and placed into the keyword detail table. For each item, there</p> <p>2 is a corresponding keyword and an origin field.</p> <p>3 Q And what database tables are indexed by the keyword detail</p> <p>4 table?</p> <p>5 A My understanding is that at minimum, the ITEMMAST,</p> <p>6 POITEMVEN, and ITEMLOC tables.</p> <p>7 Q In the context of this source code, what is the purpose of</p> <p>8 having an index like the keyword detail table?</p> <p>9 A It's common practice to create an index to -- an</p> <p>10 optimization to increase the speed of the search and to</p> <p>11 eliminate to need to search the whole collection of data when</p> <p>12 you can condense it to an index that you can search more</p> <p>13 rapidly.</p> <p>14 Q Can you explain how the item vendor table or the POITEMVEN</p> <p>15 table is used in the implementation of a keyword search in the</p> <p>16 source code?</p> <p>17 A After the search is performed against the keyword tables</p> <p>18 and item information is being retrieved, corresponding vendor</p> <p>19 information for the items is retrieved from the POITEMVEN</p> <p>20 table.</p> <p>21 Q Do the records in the item vendor or POITEMVEN table link</p> <p>22 in any way to the records in the item master or ITEMMAST table?</p> <p>23 A Yes, they do. They contain a field which holds the item</p> <p>24 number for a given item in the ITEMMAST table.</p> <p>25 Q Have you prepared a demonstrative to help you explain how</p>	<p>1246</p> <p>1 browser and hits the search button, the search term is conveyed</p> <p>2 as part of a request to the server side components which causes</p> <p>3 the Lawson 4GL COBOL program called RQIC to be executed. The</p> <p>4 RQIC program ultimately performs a search of the keyword detail</p> <p>5 table for occurrences of that term that have been previously</p> <p>6 indexed.</p> <p>7 Any matching records from the keyword detail table are</p> <p>8 then used to find the corresponding items in the ITEMMAST table</p> <p>9 and data gets gathered from the PO and ITEMLOC tables. All of</p> <p>10 those results are formatted as XML and ultimately returned to</p> <p>11 the item web browser and formatted as a search word.</p> <p>12 Q When the search code searches the keyword tables to locate</p> <p>13 the keywords that the user typed in, does the source code</p> <p>14 search the item master table at all?</p> <p>15 A No, it does not. It only searches the keyword detail</p> <p>16 table and the associated keyword tables.</p> <p>17 Q Now, I'd like to turn to the functionality for the adding</p> <p>18 items to a shopping cart and building a requisition. Does the</p> <p>19 source code of the Lawson system implement functionality that</p> <p>20 allows a user to select desired items for requisition from a</p> <p>21 list of results returned from either this category or keyword</p> <p>22 search that you discussed?</p> <p>23 A Yes, it implements a shopping cart functionality whereby</p> <p>24 the user can indicate that an item from a search result should</p> <p>25 be added to the shopping cart. Items can be added and removed</p>
<p>1245</p> <p>1 the information in these two tables can be related?</p> <p>2 A Yes, I have.</p> <p>3 MS. ALBERT: Mike, can we have slide 68, please.</p> <p>4 Q Is this the demonstrative that you prepared?</p> <p>5 A Yes, it is.</p> <p>6 Q Now, using your demonstrative, would you please explain</p> <p>7 how records in the item vendor or POITEMVEN table can be</p> <p>8 related to records in the item master table or ITEMMAST table?</p> <p>9 A Yes. So within the ITEMMAST table, or the item master</p> <p>10 table, there is a field called IITEM which holds the item</p> <p>11 number for that item. That item number uniquely identifies the</p> <p>12 item within the ITEMMAST table.</p> <p>13 The PO item vendor table then can -- given record within</p> <p>14 that table can refer to an item within the ITEMMAST table using</p> <p>15 that unique number. It's what's known as a key field in the</p> <p>16 ITEMMAST table. Within the POITEMVEN table, there's a field</p> <p>17 called PIV item which holds that number, and, therefore, if you</p> <p>18 want to, for a given item in the POITEMVEN table, you can point</p> <p>19 back to a specific unique item within the ITEMMAST.</p> <p>20 MS. ALBERT: Mike, could we go back to slide 24,</p> <p>21 please.</p> <p>22 Q Now, going back to your demonstrative on keyword search</p> <p>23 query execution, can you explain how the keyword search</p> <p>24 functionality is implemented in the Lawson system source code?</p> <p>25 A Yes. So after the user enters a search term in the</p>	<p>1247</p> <p>1 until checkout operation is performed. Similar to the way you</p> <p>2 shop on Amazon or another web business.</p> <p>3 Q Now, what, if any, database tables are involved in this</p> <p>4 shopping cart functionality?</p> <p>5 A There are three. Two of them are prefixed with the term</p> <p>6 REQ. One is called REQHEADER and the other is called REQLINE.</p> <p>7 The third is called PO interface which we mentioned before,</p> <p>8 POITERFAC.</p> <p>9 Q And what information is stored in that REQLINE table</p> <p>10 that's relevant to the shopping cart functionality?</p> <p>11 A The REQLINE table holds the individual line items</p> <p>12 representing items that were selected to be added to the</p> <p>13 shopping cart.</p> <p>14 Q Does this REQLINE table also contain a status field?</p> <p>15 A Yes, it does. In addition to the item information, it</p> <p>16 contains a status which can indicate that the item is either --</p> <p>17 while in the shopping cart, it's in a state called unreleased.</p> <p>18 Q What does that mean?</p> <p>19 A It means that it is part of a shopping cart and not yet</p> <p>20 part of a requisition.</p> <p>21 Q And is there another status that can be indicated in this</p> <p>22 status field in addition to the unreleased status that you</p> <p>23 mentioned?</p> <p>24 A Yes. So I'd just say both the REQLINE and REQHEADER table</p> <p>25 that I mentioned which are involved in this contain a status</p>

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<p style="text-align: right;">1356</p> <p style="text-align: center;">1356</p> <p>1 objection, Your Honor, and their cross designation.</p> <p>2 THE COURT: All right. It's in without</p> <p>3 objection. How do you deal with that now? You have</p> <p>4 let it in without objection.</p> <p>5 MR. ROBERTSON: No, Your Honor. I don't know</p> <p>6 if we objected or not. Our objection might have been</p> <p>7 overruled.</p> <p>8 THE COURT: Well, then you better check that</p> <p>9 out, too, because if it's overruled, that's a</p> <p>10 different issue. If you didn't open the door, they</p> <p>11 did.</p> <p>12 MR. ROBERTSON: I will look into that, Your</p> <p>13 Honor.</p> <p>14 THE COURT: Yes.</p> <p>15 MR. ROBERTSON: With respect to this issue</p> <p>16 about the published by a vendor, we have collected a</p> <p>17 number of documentation that involved both the Markman</p> <p>18 hearing the subsequent motion in limine we had with</p> <p>19 respect to proffering new constructions of any claim</p> <p>20 terms outside of the Court's construction, the</p> <p>21 discussions we had at the final pretrial conference.</p> <p>22 THE COURT: Have you tabbed them?</p> <p>23 MR. ROBERTSON: It's tabbed and highlighted,</p> <p>24 Your Honor.</p> <p>25 THE COURT: So I can read it fairly quickly.</p>	<p style="text-align: right;">1358</p> <p style="text-align: center;">1358</p> <p>1 referenced during the playing of the Frank deposition.</p> <p>2 THE COURT: All right. You mean they were</p> <p>3 used and admitted in the depositions. You just want</p> <p>4 to put the trial exhibit numbers on there?</p> <p>5 MR. STRAPP: Correct, Your Honor.</p> <p>6 THE COURT: Okay. You-all can work that out.</p> <p>7 And then you're going to rest. Is that it?</p> <p>8 MR. ROBERTSON: Yes, I believe so, Your</p> <p>9 Honor.</p> <p>10 THE COURT: What do you mean?</p> <p>11 MR. ROBERTSON: I don't have any other live</p> <p>12 witnesses.</p> <p>13 THE COURT: I was waiting for rest of the</p> <p>14 answer. Okay. We'll take an hour for lunch.</p> <p>15 (Luncheon recess taken.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">1357</p> <p style="text-align: center;">1357</p> <p>1 MR. ROBERTSON: I've provided it to Mr.</p> <p>2 McDonald.</p> <p>3 MR. McDONALD: I thought you asked us to try</p> <p>4 to get together and agree on a joint appendix of these</p> <p>5 materials.</p> <p>6 THE COURT: I thought that's what this it</p> <p>7 was.</p> <p>8 MR. ROBERTSON: He has it.</p> <p>9 THE COURT: He may want to add to them.</p> <p>10 That's the point.</p> <p>11 MR. McDONALD: We should be able to work it</p> <p>12 out over lunch.</p> <p>13 THE COURT: I'm sure you can. But if you</p> <p>14 work it out early, then I can look at it.</p> <p>15 MR. ROBERTSON: Your Honor, I think when we</p> <p>16 return from lunch, I'll just confirm with my</p> <p>17 colleagues, there's just some issues we need to take</p> <p>18 up with respect to some exhibits that were to the</p> <p>19 Frank videotape deposition that was played, and then</p> <p>20 there are about four or five stipulations I'd like to</p> <p>21 read into the record.</p> <p>22 THE COURT: I didn't know about the Frank</p> <p>23 deposition. What are you talking about?</p> <p>24 MR. STRAPP: Your Honor, we just wanted to</p> <p>25 identify for the record the exhibits that were</p>	<p style="text-align: right;">1359</p> <p style="text-align: center;">1359</p> <p>1 THE COURT: The jury reports that they'd like to work</p> <p>2 both Saturday and Monday. You're really not sure, are you, Mr.</p> <p>3 Strapp?</p> <p>4 The jury doesn't want to work -- they said they don't</p> <p>5 want to work either day, so I think we'll not work on Monday.</p> <p>6 MR. ROBERTSON: Is it a unanimous decision, Your</p> <p>7 Honor?</p> <p>8 MR. McDONALD: Can we poll the jury?</p> <p>9 THE COURT: I didn't poll them -- I didn't ask them</p> <p>10 either.</p> <p>11 COURT SECURITY OFFICER: It was the majority.</p> <p>12 THE COURT: Okay. You want to make your Rule 50</p> <p>13 motion.</p> <p>14 MR. McDONALD: I've been replaced for this one. Ms.</p> <p>15 Hughey will be arguing.</p> <p>16 THE COURT: All right.</p> <p>17 MS. HUGHEY: Thank you, Your Honor. Lawson</p> <p>18 respectfully moves this Court for judgment as a matter of law</p> <p>19 under Rule 50 of the Federal Rules of Civil Procedure. ePlus</p> <p>20 has been fully heard on the issue of infringement, and a</p> <p>21 reasonable jury does not have a legally sufficient evidentiary</p> <p>22 basis for find for ePlus on this issue.</p> <p>23 The testimony and documents introduced at trial</p> <p>24 demonstrate that Lawson did not directly or indirectly infringe</p> <p>25 asserted claims three, 26, 28, or 29 of the '683 patent, claims</p>

<p>1360</p> <p>1 one, two, six, nine, 21, 22, or 29 of the '516 patent, or claim 2 one of the '172 patent. For this reason, Lawson requests the 3 Court resolve the issue of infringement against ePlus in this 4 case.</p> <p>5 With respect to direct infringement, ePlus has not 6 proven that Lawson directly infringes the asserted claims. 7 During trial, Dr. Weaver provided his infringement opinion on 8 five Lawson accused systems: Inventory control, purchase order 9 and requisitions, also referred to as S3 procurement, RSS 10 combined with S3 procurement, punchout combined with S3 and RSS 11 procurement, EDI combined with S3 procurement and all modules 12 combined.</p> <p>13 ePlus has not proven that it is more likely than not 14 that Lawson has made, used, offered to sell, or sold the 15 inventions defined in the asserted claims. A reasonable jury 16 does not have a legally sufficient evidentiary basis to find 17 otherwise.</p> <p>18 With respect to the asserted systems claim three of 19 the '683 patents, claims one, two, six, nine, 21, 22, or 29 of 20 the '516 patent and claim one of 172 patent, ePlus has not 21 proven that Lawson's accused products have any of the required 22 elements. ePlus's expert, Dr. Weaver's testimony was 23 conclusory, unsupported, and insufficient to meet ePlus's 24 burden to prove that Lawson's accused systems have these 25 required elements.</p>	<p>1362</p> <p>1 infringement.</p> <p>2 Second, ePlus has not proven that the legal 3 requirements of indirect infringement have been met. Among 4 other things, both contributory and induced infringement 5 require intent, an element ePlus has failed to prove. 6 Contributory infringement requires proof that the accused 7 infringer offers a component of a patented machine knowing the 8 same to be especially made or especially adapted for use in 9 infringement of such patent and not a staple article or 10 commodity of commerce suitable for substantial non-infringing 11 use.</p> <p>12 The Federal Circuit has instructed that for this 13 requirement to be met, plaintiff must show the defendant knew 14 that the combination for which its components were especially 15 made was both patented and infringing.</p> <p>16 For induced infringement, a patentee must demonstrate 17 that the accused infringer's actual or constructive notice of 18 the patent and its intent to induce infringement of the patent 19 requires culpable conduct, namely that the alleged infringer's 20 actions induced infringing acts and that he knew or should have 21 known his actions would induce actual infringement.</p> <p>22 Legal requirements for contributory and induced 23 infringement have not been met in this case. There is no 24 evidence that Lawson knew of the patents before the lawsuit was 25 filed in May of 2009, let alone had the intent required for the</p>
<p>1361</p> <p>1 ePlus also has not proven that Lawson practices all 2 of the steps required by method claims 26, 28, and 29 of the 3 '683 patent. At trial, ePlus did not even accuse Lawson of 4 performing all of the steps of these method claims. Indeed, 5 when questioned, Dr. Weaver never opined that Lawson performed 6 the step of maintaining at least two product catalogs on the 7 database containing data related to items associated with the 8 respective sources, selecting the product catalogs to search, 9 or searching for matching items among the selected product 10 catalogs.</p> <p>11 Thus, the jury does not have a legally sufficient 12 basis to find for ePlus on the issue of direct infringement of 13 the method claims, and this Court should grant judgment as a 14 matter of law that Lawson does not directly infringe any of the 15 method claims.</p> <p>16 With respect to indirect infringement, ePlus has also 17 not proven that Lawson indirectly infringes the asserted 18 claims. A reasonable jury does not have a legally sufficient 19 evidentiary basis to find otherwise. First, liability for 20 indirect infringement, either contributory or induced 21 infringement, requires proof of direct infringement.</p> <p>22 ePlus has failed to prove that any third party, 23 either customers, vendor, or other, directly infringed any of 24 the claims in suit. Thus, a reasonable jury does not have a 25 legally sufficient evidentiary basis to find indirect</p>	<p>1363</p> <p>1 contributory or induced infringement. Further, there is no 2 evidence that Lawson should have known of ePlus's patents.</p> <p>3 Dr. Weaver's opinion on the issue of induced 4 infringement is totally irrelevant. Not only is it conclusory, 5 he did not consider the knowledge issue at all. The same is 6 true with respect to contributory infringement. With respect 7 to the accused punchout system, the jury does not have a 8 legally sufficient evidentiary basis to find for ePlus on the 9 issue of infringement.</p> <p>10 Lawson did not practice all of the claimed method 11 steps with respect to the punchout product, and Lawson's system 12 does not meet all of the required system limitations with 13 respect to the punchout product. This Court should grant 14 judgment as a matter of law that the punchout system does not 15 infringe any of the asserted claims.</p> <p>16 First, with respect to method claim 26, 28, and 29 of 17 the '683 patent, there has been no showing that any one party 18 performs every single one of the claimed method steps for the 19 punchout products.</p> <p>20 There is no dispute that ePlus relies on the actions 21 of customers and third-party vendors in its argument that the 22 claim limitations are met with respect to this product. For 23 example, ePlus argues the step of maintaining at least two 24 product catalogs on a database containing data related to items 25 associated with the respective sources is met by external</p>

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<p>1364</p> <p>1 vendor catalog, not Lawson.</p> <p>2 Likewise, Dr. Weaver never asserted Lawson practiced</p> <p>3 the step of determining whether a selected matching item is</p> <p>4 available in inventory; instead, merely opining in a conclusory</p> <p>5 fashion that punchout allows the step to happen while admitting</p> <p>6 that Lawson did not have any idea what was available in the</p> <p>7 inventory of the third-party vendors, and with respect to</p> <p>8 searching for matching items, ePlus argues a user searches on a</p> <p>9 vendor's website using a vendor search engine, which, again, is</p> <p>10 a step that Lawson does not practice.</p> <p>11 The systems claims are likewise deficient. Claim</p> <p>12 three of the '683 patent and claims one, two, six, nine, 21,</p> <p>13 22, and 29 of the '516 patent all require multiple catalogs.</p> <p>14 Dr. Weaver opined that these claims were infringed by the</p> <p>15 punchout product because punchout allows users to have access</p> <p>16 to external vender catalogs, not Lawson catalogs.</p> <p>17 Claim one of '172 patent is also a system claim which</p> <p>18 requires a database containing data relating to items</p> <p>19 associated with at least two vendors maintained so that</p> <p>20 selected portions of the database may be searched separately.</p> <p>21 Dr. Weaver opined that this limitation was met by the separate</p> <p>22 databases of the external punchout site, but there is no</p> <p>23 dispute that Lawson has not maintained separate databases of</p> <p>24 the external punchout sites. Those external vendor catalogs</p> <p>25 are maintained by the vendor.</p>	<p>1366</p> <p>1 that's related to direct infringement. Under direct</p> <p>2 infringement, one party has to actively engage in every single</p> <p>3 step or method claim. If, however, a party has an agency</p> <p>4 relationship with another, in certain limited circumstances,</p> <p>5 the Court has allowed that to be a direct infringement.</p> <p>6 For indirect infringement to occur, there must be at</p> <p>7 least one direct infringer. That is to say that someone must</p> <p>8 be practicing the steps.</p> <p>9 THE COURT: Are you saying joint infringement doesn't</p> <p>10 apply to indirect infringement?</p> <p>11 MS. HUGHEY: In theory you could have two parties</p> <p>12 engaging in joint infringement and a third party guilty of --</p> <p>13 THE COURT: But on this record, is there any theory</p> <p>14 of joint infringement that exists as to indirect infringement?</p> <p>15 Any basis any jury could find that?</p> <p>16 MS. HUGHEY: I don't believe so, Your Honor, no.</p> <p>17 THE COURT: Why?</p> <p>18 MS. HUGHEY: On this record, there's no -- on this</p> <p>19 record, ePlus could not prove joint infringement because it</p> <p>20 hasn't demonstrated that there is an agency relationship</p> <p>21 between Lawson and any third party.</p> <p>22 THE COURT: I thought you said, though, that that</p> <p>23 made it direct infringement.</p> <p>24 MS. HUGHEY: That's right. Joint infringement is</p> <p>25 direct infringement.</p>
<p>1365</p> <p>1 ePlus cannot rely on the doctrine of joint</p> <p>2 infringement to resolve the issue of direct infringement as it</p> <p>3 has failed to show that Lawson has the required control over</p> <p>4 the third parties or that Lawson performs the remaining steps.</p> <p>5 In a situation in which more than one party is</p> <p>6 required to perform the steps of a claimed method, there is no</p> <p>7 infringement unless one party exercises control or direction</p> <p>8 over the entire process such that every step is attributable to</p> <p>9 the controlling party.</p> <p>10 The same requirement for direction and control</p> <p>11 applies to the system claims as well. Lawson does not exercise</p> <p>12 control or direction over any third party, suppliers, vendors,</p> <p>13 distributors, manufacturers, or others who sell items to</p> <p>14 Lawson's customers. Likewise, Lawson exercises no control over</p> <p>15 its customers. Lawson does not have an agency relationship</p> <p>16 with any party that performs any of the remaining steps from</p> <p>17 the system or method claims.</p> <p>18 While Lawson may reach an agreement with certain</p> <p>19 vendors to allow them to provide services to its clients --</p> <p>20 THE COURT: What's the difference, Ms. Hughey,</p> <p>21 between joint infringement and induced infringement in this</p> <p>22 case on this record? I know conceptually what the difference</p> <p>23 is, but is there really any difference in this case between</p> <p>24 those two?</p> <p>25 MS. HUGHEY: With respect to joint infringement,</p>	<p>1367</p> <p>1 THE COURT: I understand, but I also asked you,</p> <p>2 because some of the instructions you all tendered suggested</p> <p>3 that joint infringement an application in the indirect</p> <p>4 infringement context. Are you contending that or not?</p> <p>5 MS. HUGHEY: I don't believe that we're contending</p> <p>6 that the joint infringement is the same thing as indirect</p> <p>7 infringement or that it has applicability to indirect</p> <p>8 infringement. It's possible that --</p> <p>9 THE COURT: So the joint infringement doesn't -- do</p> <p>10 you understand it doesn't even apply to indirect infringement?</p> <p>11 MS. HUGHEY: I think it could apply to indirect --</p> <p>12 THE COURT: On the facts of this case.</p> <p>13 MS. HUGHEY: Correct, Your Honor. Correct. As I was</p> <p>14 saying, Lawson does not control that vendor or contractually</p> <p>15 obligate them to do anything. Likewise, Lawson does not have</p> <p>16 control over what its customers do, as they act for their own</p> <p>17 benefit and under their own control. Because there is no</p> <p>18 single direct infringer, there can be no indirect infringement</p> <p>19 either.</p> <p>20 THE COURT: All right.</p> <p>21 MS. HUGHEY: I have two more points, Your Honor.</p> <p>22 Unless you have a question? With respect to the unaccused</p> <p>23 systems, Lawson has provided no basis for a reasonable jury to</p> <p>24 find for ePlus with respect to certain unaccused systems.</p> <p>25 THE COURT: If it's not accused, what do I care? I</p>

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<p>1368</p> <p>1 don't need to rule on an unaccused system.</p> <p>2 MS. HUGHEY: They were potentially accused in the</p> <p>3 pretrial order, but then during trial, it became clear they</p> <p>4 were no longer accused. I am not sure ePlus would actually</p> <p>5 oppose this part of the motion.</p> <p>6 THE COURT: What are you talking about, unaccused?</p> <p>7 Looking for the approvals on the purchasing agent?</p> <p>8 MS. HUGHEY: I'm sorry, Your Honor. Certain systems</p> <p>9 -- I think you remember that Dr. Weaver accused five systems of</p> <p>10 infringing, and then he went through claim by claim, but he did</p> <p>11 not accuse every system of accusing every claim.</p> <p>12 THE COURT: You don't need judgment on any system</p> <p>13 that they don't have any evidence on. Is there anything else?</p> <p>14 MS. HUGHEY: One final thing. I don't believe that</p> <p>15 ePlus is asserting the doctrine of equivalents infringement,</p> <p>16 but I'd like to make a record here that we move for judgment as</p> <p>17 a matter of law to the extent that they would suggest</p> <p>18 otherwise.</p> <p>19 MR. ROBERTSON: We will stipulate we haven't made the</p> <p>20 doctrine of equivalents argument with respect to the</p> <p>21 infringement.</p> <p>22 MS. HUGHEY: That's all I have, Your Honor. We'd be</p> <p>23 willing to brief any of these issues further.</p> <p>24 THE COURT: Thank you.</p> <p>25 MR. ROBERTSON: Thank you, Your Honor. I'm sure you</p>	<p>1370</p> <p>1 theoretically can that be the case, absolutely. Do you want me</p> <p>2 give you a scenario in the facts of this case in which it could</p> <p>3 be occurring, I'm happy to do so.</p> <p>4 THE COURT: What is your theory? Are you pressing</p> <p>5 joint infringement in the indirect infringement context? If</p> <p>6 you aren't, I don't need to hear anything further about it, and</p> <p>7 since it's such a rare animal, even if it's not in the extant</p> <p>8 one or ever was, just fish or cut bait.</p> <p>9 MR. ROBERTSON: Your Honor, this joint infringement</p> <p>10 position is a defense that Lawson is taking because they are</p> <p>11 arguing that they don't have control or direction over their</p> <p>12 punchout partners. Now, I think we marshalled the substantial</p> <p>13 evidence that showed that is not the case, but how could an</p> <p>14 indirect or induced infringement scenario --</p> <p>15 THE COURT: They don't direct claims like that. Do</p> <p>16 you claim there is a joint infringement under the indirect</p> <p>17 infringement case you are presenting? I think that you don't.</p> <p>18 I think they, in fact, then -- they may say, well, even if its</p> <p>19 joint infringement, you are saying we don't have control, but</p> <p>20 in the first instance it's you who presses the point, so do you</p> <p>21 or do you not have a joint infringement claim under your theory</p> <p>22 of indirect infringement, or are you going to give it a mercy</p> <p>23 killing?</p> <p>24 MR. ROBERTSON: Your Honor, I don't want to give it a</p> <p>25 mercy killing because it shouldn't be killed, and let me</p>
<p>1369</p> <p>1 can appreciate that just like Your Honor, I've heard those</p> <p>2 arguments for the first time right now, so let me see if I can</p> <p>3 try and track them for you and answer any questions you might</p> <p>4 specifically have.</p> <p>5 We think we brought forth ample evidence of both</p> <p>6 direct infringement and induced infringement --</p> <p>7 THE COURT: Do you take the view that joint</p> <p>8 infringement applies in the indirect infringement claim?</p> <p>9 MR. ROBERTSON: I think there can be a joint</p> <p>10 infringement scenario in which Lawson aids, assists, abets,</p> <p>11 encourages their customers to indirectly -- to induce</p> <p>12 infringement, and that would be a situation, Your Honor, for</p> <p>13 example, if Your Honor concludes --</p> <p>14 THE COURT: What is the difference between that and</p> <p>15 contributory infringement then? I think it's very confusing to</p> <p>16 the jury to have this joint infringement issue in the case in</p> <p>17 the indirect infringement issue, and I don't even understand</p> <p>18 how it would apply on the facts of the case anyway.</p> <p>19 But forget about the facts of the case. Is there any</p> <p>20 case that holds joint infringement applies in indirect</p> <p>21 infringement charges?</p> <p>22 MR. ROBERTSON: I haven't seen one specifically, Your</p> <p>23 Honor.</p> <p>24 THE COURT: I haven't either. Never heard of it.</p> <p>25 MR. ROBERTSON: But, you know, if you want to ask me</p>	<p>1371</p> <p>1 explain why that's the case. Let me give you a scenario with</p> <p>2 where there can be an induced infringement in a joint</p> <p>3 infringement -- direct infringement case. You have --</p> <p>4 THE COURT: Huh-uh. I didn't ask about direct.</p> <p>5 MR. ROBERTSON: Yes, we are pressing an indirect</p> <p>6 infringement that could involve joint infringement, direct</p> <p>7 infringement.</p> <p>8 THE COURT: What is that?</p> <p>9 MR. ROBERTSON: What is it?</p> <p>10 THE COURT: Yes.</p> <p>11 MR. ROBERTSON: It is inducing someone, perhaps more</p> <p>12 than one party, to actually commit the direct infringement.</p> <p>13 THE COURT: Why isn't that induced infringement?</p> <p>14 MR. ROBERTSON: It is --</p> <p>15 THE COURT: -- under indirect infringement, and why</p> <p>16 isn't it then joint infringement under direct infringement?</p> <p>17 MR. ROBERTSON: I agree with Ms. Hughey that joint</p> <p>18 infringement is a direct infringement theory.</p> <p>19 THE COURT: That's all I'm asking you.</p> <p>20 MR. ROBERTSON: Okay. Then I'm sorry. I</p> <p>21 misapprehended Your Honor's question, but Ms. Hughey and I</p> <p>22 agree joint infringement is direct infringement.</p> <p>23 THE COURT: The instructions that both of you</p> <p>24 tendered did not distinguish, and some of the arguments that</p> <p>25 were being made suggested to me that you were pressing a theory</p>

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<p>1372</p> <p>1 of which I was unaware, and now that we've gotten that</p> <p>2 straight, what's the joint infringement theory under the direct</p> <p>3 infringement claims? In this case on this record.</p> <p>4 MR. ROBERTSON: Well, joint infringement sometimes is</p> <p>5 called divided infringement when a defendant wants to say that</p> <p>6 they are not directly controlling the actions of another, and</p> <p>7 the way I understood Ms. Hughey's argument to be is they say,</p> <p>8 we really don't know what these punchout trading partners are</p> <p>9 doing that we have. Once you go to their website, it's all up</p> <p>10 to them. So the evidence turns on whether or not there's</p> <p>11 direction and control with respect to what's been proffered so</p> <p>12 far before the Court.</p> <p>13 THE COURT: Direction and control of whom?</p> <p>14 MR. ROBERTSON: The third party punchout partners,</p> <p>15 Your Honor, their trading partners that they either have</p> <p>16 informal agreements with or formal agreements with in which</p> <p>17 they -- I think one of the intentions of the formal agreements</p> <p>18 is we're going to do this jointly. We're going to make a joint</p> <p>19 effort, combine our products.</p> <p>20 I asked Mr. Lohkamp, do you do that for the mutual</p> <p>21 benefit of both companies. He said absolutely. We heard</p> <p>22 evidence that the Lawson system controls the punchout process,</p> <p>23 that they provide the protocols. Mr. Lohkamp even called it</p> <p>24 the handshake that lets you get there. Dr. Weaver testified</p> <p>25 you can't -- you don't even leave the Lawson system, and when</p>	<p>1374</p> <p>1 demonstration that Dr. Weaver did a punchout, to go out and get</p> <p>2 the data and retrieve it, it still was branded with Lawson.</p> <p>3 You were framed within a Lawson website, and as Dr. Weaver</p> <p>4 said, you never left.</p> <p>5 So you can't even do the punchout process without the</p> <p>6 Lawson software. That's the first step. And then once you do</p> <p>7 do it, you are there, and you are retrieving the data, and you</p> <p>8 are putting it in your requisition, and you are building your</p> <p>9 purchase order just as the claims described.</p> <p>10 So that, Your Honor, I think is the only scenario in</p> <p>11 which I would think the joint infringement could arise at all</p> <p>12 if you even needed to go there, and I think in our papers we</p> <p>13 would argue first that this is not a situation of joint</p> <p>14 infringement, but even if it were, that it's been satisfied by</p> <p>15 the evidence that's been presented here.</p> <p>16 And so how do you induce that direct infringement</p> <p>17 which I think we're in agreement is joint infringement? Lawson</p> <p>18 induces it by first providing the functionality in its punchout</p> <p>19 software to do that. Second, it induces it by providing their</p> <p>20 customers with the guides, the implementation, the</p> <p>21 installation, the services. They provide all of that kind of</p> <p>22 evidence is evidence that they are abetting and assisting.</p> <p>23 So we think that the facts of this case, particularly</p> <p>24 Dr. Weaver who went through, you will recall, that eight-step</p> <p>25 protocol you need to do in order to set up this communication</p>
<p>1373</p> <p>1 you go to the website, there was that special URL that showed</p> <p>2 you had never left the Lawson system, that you are not at a</p> <p>3 commercial website. You are at a website that has been</p> <p>4 especially prepared for Lawson's customers using the</p> <p>5 procurement punchout.</p> <p>6 The customer has to say to Lawson, we want you to set</p> <p>7 this up. We'll tell you who our punchout partners are. Lawson</p> <p>8 then goes out, they either contract with them, or they make an</p> <p>9 arrangement if the protocols work, and we actually demonstrated</p> <p>10 the punchout process.</p> <p>11 So the argument becomes, boils down to this: Well,</p> <p>12 when you finally punched out, but you never left the Lawson</p> <p>13 system, you then can search content provided by the supplier,</p> <p>14 for example. But, of course, that's exactly why the whole</p> <p>15 arrangement was set up, for their joint effort and mutual</p> <p>16 benefit.</p> <p>17 So we think, quite frankly, Your Honor -- there's a</p> <p>18 recent decision called Akamai that came down from the Federal</p> <p>19 Circuit perhaps two weeks ago, and it was a situation of joint</p> <p>20 infringement, and we think if there were ever a situation that</p> <p>21 joint infringement applied through a factual scenario, it is</p> <p>22 this case. This case is the poster child for joint</p> <p>23 infringement because of the relationship that Lawson has with</p> <p>24 its punchout trading partners.</p> <p>25 You will remember, even when we were looking at the</p>	<p>1375</p> <p>1 links, and no one has ever denied or challenged the fact that</p> <p>2 it's Lawson that sets up this communication protocol and</p> <p>3 permits this process to happen, and Mr. Lohkamp even conceded,</p> <p>4 you can't do it without the punchout procurement software.</p> <p>5 So when you do that, you are inducing the direct</p> <p>6 infringement by the customers performing those steps of the</p> <p>7 method claims when they go through and they select catalogs</p> <p>8 which Dr. Weaver showed in his demonstration. They search</p> <p>9 those catalogs, they match items, they build a requisition, and</p> <p>10 they build and generate the purchase order.</p> <p>11 THE COURT: Thank you.</p> <p>12 MR. ROBERTSON: He showed how to do it both from an</p> <p>13 internal catalog database and -- which Lawson can set up in the</p> <p>14 customer's software, and an external catalog database which is</p> <p>15 the punchout.</p> <p>16 THE COURT: Thank you. Is there -- is this record</p> <p>17 now complete on the issue of willful infringement?</p> <p>18 MR. ROBERTSON: Of what, sir?</p> <p>19 THE COURT: Is the record complete on willful</p> <p>20 infringement?</p> <p>21 MR. ROBERTSON: I do not believe so. I thought we</p> <p>22 were going to reserve some of those things.</p> <p>23 THE COURT: What are you going to do and when are you</p> <p>24 going to do it?</p> <p>25 MR. ROBERTSON: Well, I thought we had bifurcated</p>

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<p style="text-align: right;">1376</p> <p>1 willful infringement. I contemplated that Your Honor might</p> <p>2 want to have a short hearing, perhaps a half a day, as to</p> <p>3 evidence on that.</p> <p>4 THE COURT: Could we use Monday or Saturday?</p> <p>5 MR. McDONALD: Let me go back and --</p> <p>6 THE COURT: Do you really have a case of willful</p> <p>7 infringement here?</p> <p>8 MR. ROBERTSON: I think one of the things, Your</p> <p>9 Honor -- certainly didn't contemplate that I was going to have</p> <p>10 to put on evidence in this portion of the case because I agreed</p> <p>11 to bifurcate that, but let me address that specifically.</p> <p>12 Number one, Lawson --</p> <p>13 THE COURT: The point is, if you haven't -- when are</p> <p>14 you going to put on the evidence of willful infringement, and</p> <p>15 basically what is it going to be if it's not already in? The</p> <p>16 question is, what did you do? Did you decide to put in what</p> <p>17 you had and let me decide it? We never did decide whether we</p> <p>18 were going to have a hearing. I was going to have to decide</p> <p>19 the issue, but we never did decide how we were going to do it</p> <p>20 unless my memory fails.</p> <p>21 MR. ROBERTSON: Your Honor --</p> <p>22 THE COURT: Do you have additional evidence on</p> <p>23 willfulness that isn't in the record at this time? That's all</p> <p>24 I want to know.</p> <p>25 MR. ROBERTSON: Let me think. I think there's</p>	<p style="text-align: right;">1378</p> <p>1 THE COURT: Do you have any case that says that?</p> <p>2 MR. ROBERTSON: Your Honor, I'll have to go and</p> <p>3 check. One of my colleagues reminded me of a case that I have</p> <p>4 not actually read and I don't want to represent to the Court.</p> <p>5 THE COURT: It's a good thing not to argue a case you</p> <p>6 haven't read.</p> <p>7 MR. ROBERTSON: I didn't want to do that.</p> <p>8 THE COURT: Unless you want me to decide on the bases</p> <p>9 of the cases I have read.</p> <p>10 MR. ROBERTSON: No, Your Honor. In fairness, I came</p> <p>11 here today to try and prepare to argue this. I was not</p> <p>12 thinking in terms of the representation of the Court what the</p> <p>13 willfulness case should be.</p> <p>14 I think you've heard some evidence that under the</p> <p>15 totality of the circumstances, you could consider as being</p> <p>16 evidence that would warrant a conclusion of willful</p> <p>17 infringement. I think there would be some additional evidence.</p> <p>18 Right now what comes to mind--</p> <p>19 THE COURT: We'll deal with that later. Thank you.</p> <p>20 MR. ROBERTSON: Do you need to hear any --</p> <p>21 THE COURT: No, thank you. The motion did not relate</p> <p>22 to willfulness, so I'm not going to deal with it. I was just</p> <p>23 asking you a question while you were standing up there.</p> <p>24 MR. ROBERTSON: Thank you.</p> <p>25 MS. HUGHEY: Your Honor, if I may, with respect to</p>
<p style="text-align: right;">1377</p> <p>1 evidence that Lawson had an opinion of counsel that it obtained</p> <p>2 early on and refused to turn over that opinion and stood on the</p> <p>3 privilege. While there is not an adverse inference the jury</p> <p>4 can draw --</p> <p>5 THE COURT: The jury doesn't draw that. I'm drawing</p> <p>6 it.</p> <p>7 MR. ROBERTSON: Well, I think if the Court wasn't</p> <p>8 aware, there was an opinion early on that was given --</p> <p>9 THE COURT: Didn't you all agree I did willfulness?</p> <p>10 Isn't that what you agreed?</p> <p>11 MR. ROBERTSON: Yes, sir.</p> <p>12 THE COURT: All right. I wanted to make sure --</p> <p>13 MR. ROBERTSON: In addition to the evidence that</p> <p>14 there's been nothing done by Lawson since they've been put on</p> <p>15 notice of this lawsuit in May 2009, no redesign, no good</p> <p>16 faith effort --</p> <p>17 THE COURT: Mr. Robertson, I'm not asking you to</p> <p>18 argue. I'm asking do you have any other evidence that you</p> <p>19 haven't put on. You tell me about willfulness. You tell me</p> <p>20 that there's an opinion of counsel that they declined to</p> <p>21 produce and stood on the privilege. Can the finder of fact</p> <p>22 draw from that an inference of willfulness?</p> <p>23 MR. ROBERTSON: I think the finder of fact can</p> <p>24 consider that in the totality of the circumstances which is the</p> <p>25 test for willfulness.</p>	<p style="text-align: right;">1379</p> <p>1 the issue of joint infringement, ePlus's counsel suggested that</p> <p>2 it was a defense, and that's not the case. ePlus always has</p> <p>3 the burden of proof on the issue of infringement, and it can</p> <p>4 pursue that burden of proof either through the direct</p> <p>5 infringement --</p> <p>6 THE COURT: Ms. Hughey, what he said was, he's not</p> <p>7 contending it's joint infringement, you are, saying that if it</p> <p>8 was any kind of infringement it's joint infringement and you</p> <p>9 win -- and he wins -- because you haven't any evidence of the</p> <p>10 elements of it, I believe; is that right, Mr. Robertson, or did</p> <p>11 I miss it?</p> <p>12 MR. ROBERTSON: My argument, Your Honor, was whether</p> <p>13 it's direct infringement just by Lawson committing all the</p> <p>14 steps or having the system, or whether it's joint infringement,</p> <p>15 we win either way.</p> <p>16 THE COURT: I understand that, but what you said was</p> <p>17 we don't think it's joint infringement, but even if it is, we</p> <p>18 win. The predicate of that sentence is, we don't think it's</p> <p>19 joint infringement, and that's what I am trying to ascertain.</p> <p>20 You said it was they who injected that question, the</p> <p>21 defendants injected that issue in, and you don't think it's</p> <p>22 joint infringement, but even if it is, you win. Is that your</p> <p>23 position or not?</p> <p>24 MR. ROBERTSON: That's our position, Your Honor.</p> <p>25 THE COURT: Okay, thank you very much. Now you know</p>

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<p>1380</p> <p>1 the framework.</p> <p>2 MS. HUGHEY: Okay. Well, with respect to that then,</p> <p>3 if ePlus is not asserting joint infringement as a method to</p> <p>4 prove infringement, then I think it's going to be easy --</p> <p>5 THE COURT: Then you are not asserting that this is</p> <p>6 any joint infringement issue for me to decide; is that right?</p> <p>7 MS. HUGHEY: I'm moving for judgment as a matter of</p> <p>8 law --</p> <p>9 THE COURT: No, you are not asserting that there's a</p> <p>10 joint infringement issue for me to decide; right?</p> <p>11 MR. ROBERTSON: Who are you pointing to, Your Honor;</p> <p>12 me?</p> <p>13 THE COURT: Ms. Hughey.</p> <p>14 MS. HUGHEY: ePlus has the burden of proof on</p> <p>15 infringement.</p> <p>16 THE COURT: I understand that, but you need to answer</p> <p>17 the question that I asked. You are the one who got up here and</p> <p>18 argued it. He says he doesn't content that it's joint</p> <p>19 infringement, but even if there is, he wins.</p> <p>20 Now, I understand your argument to be that if there's</p> <p>21 any infringement that's been available to go to a jury, it is</p> <p>22 joint infringement and you win because the elements haven't</p> <p>23 been made out for joint infringement. That was your argument</p> <p>24 as I understand it, wasn't it? Wasn't it your argument?</p> <p>25 MS. HUGHEY: Yes, both there is no direct</p>	<p>1382</p> <p>1 With respect to that case, what the Federal Circuit</p> <p>2 found was that there was no joint infringement because the</p> <p>3 accused infringer did not perform all of the steps of the</p> <p>4 accused claims, and there was no evidence that the accused</p> <p>5 infringer's customers performed the remaining steps as agents</p> <p>6 of the accused infringer.</p> <p>7 In that case, the patents related to a system and</p> <p>8 method for allowing a content provider to outsource the storage</p> <p>9 and delivery of discrete portions of its website content.</p> <p>10 THE COURT: Let me ask you something. Since he's</p> <p>11 saying, he's not arguing there's any joint infringement, why</p> <p>12 are you bringing to me an issue of joint infringement in the</p> <p>13 first place? Why don't you just say, he has agreed there's no</p> <p>14 issue of joint infringement, and so we don't have to discuss</p> <p>15 that any further? In other words, I have cornered the fox in</p> <p>16 his den. And he has folded.</p> <p>17 MS. HUGHEY: Your Honor, I would like to say that I</p> <p>18 have cornered the fox in his den, and he has folded.</p> <p>19 THE COURT: Thank you.</p> <p>20 MR. ROBERTSON: Your Honor, can I respond to that?</p> <p>21 THE COURT: Don't get out of the den, and it's her</p> <p>22 motion, so she gets the last word. Don't try to get out of the</p> <p>23 den.</p> <p>24 MR. ROBERTSON: We're only talking about this</p> <p>25 punchout scenario here.</p>
<p>1381</p> <p>1 infringement by Lawson alone, and there is also no direct</p> <p>2 infringement by Lawson combined with another party through a</p> <p>3 doctrine called joint infringement. That's what I'm saying,</p> <p>4 Your Honor.</p> <p>5 THE COURT: But you also are saying if they have</p> <p>6 proved any infringement, directly, direct infringement, it's</p> <p>7 joint, and you don't -- and you don't infringe jointly because</p> <p>8 they haven't made out the elements of a joint infringement</p> <p>9 claim in a direct infringement context; right?</p> <p>10 MS. HUGHEY: I don't think I said that they proved</p> <p>11 infringement in any context, Your Honor.</p> <p>12 THE COURT: I didn't say that they had. Listen</p> <p>13 tight, as John Wayne used to say, soldier. If -- you are</p> <p>14 saying, we don't think that there's any infringement at all.</p> <p>15 MS. HUGHEY: Yes.</p> <p>16 THE COURT: But if they've proved any kind of</p> <p>17 infringement, then the best it could be is joint infringement,</p> <p>18 and even if that's what they're going for, they lose because</p> <p>19 they haven't put out the evidence, they haven't made out the</p> <p>20 elements of that. Isn't that what you are saying?</p> <p>21 MS. HUGHEY: That's fair, Your Honor, yes. With</p> <p>22 respect to the issue of joint infringement, counsel references</p> <p>23 this Akamai case, and I can give you the cite. It's a very</p> <p>24 recent case. It doesn't have the F Reporter yet. 2010, U.S.</p> <p>25 App. LEXIS 25825. That's a recent Federal Circuit case.</p>	<p>1383</p> <p>1 THE COURT: No, no. That's like -- you just folded</p> <p>2 over here.</p> <p>3 MR. ROBERTSON: Your Honor --</p> <p>4 THE COURT: Not only did you fold, you induced her to</p> <p>5 quit.</p> <p>6 MR. ROBERTSON: But the joint infringement context</p> <p>7 didn't come out in the initial opening argument outside of the</p> <p>8 context of what the third party punchout partners did.</p> <p>9 Now, did they do anything? Yeah, they provided the</p> <p>10 catalog content, and they'll let you search a site and it all</p> <p>11 comes back to Lawson. So there are two steps that they have to</p> <p>12 perform.</p> <p>13 Now, they can even be inducing those steps by the</p> <p>14 facts that I already have adduced to the Court. They can be</p> <p>15 inducing those parties to do it, or they can be doing under</p> <p>16 their direction or control. So as I say, Your Honor, I think</p> <p>17 we win on alternative theories of --</p> <p>18 THE COURT: But you didn't have that theory, and you</p> <p>19 told me you didn't have the joint infringement theory under the</p> <p>20 direct infringement --</p> <p>21 MR. ROBERTSON: I don't think we need to -- first of</p> <p>22 all, I want to make clear we're talking -- I was talking only</p> <p>23 about punchout, because there are method claims that are</p> <p>24 performed by the customers when Lawson provides them with</p> <p>25 features and functionality, the five software --</p>

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<p>1384</p> <p>1 THE COURT: You are through. You don't have any</p> <p>2 joint infringement claim under anything. That's what you told</p> <p>3 me, and that's it. Sit down. Have a seat. That's it. I</p> <p>4 mean, there's a limit to what I have, what I can deal with here</p> <p>5 and what is allowed, and you just transcended it by saying</p> <p>6 that. I don't have to rule on that now. It's already been</p> <p>7 dealt with by way of a concession as to the Rule 50 motion,</p> <p>8 there is -- and there is no doctrine of equivalents claim</p> <p>9 notwithstanding what some of the instructions that were</p> <p>10 tendered say.</p> <p>11 So to the extent the doctrine of equivalents is</p> <p>12 asserted on any claim, the motion for judgment as a matter of</p> <p>13 law is granted, but I believe they said they don't have the</p> <p>14 claim, so the rest of the issue is whether there is, as to any</p> <p>15 of the patents, claims of the patents-in-suit, a reasonable</p> <p>16 basis for a reasonable jury to find patent infringement, and</p> <p>17 there is under theories of both direct and indirect</p> <p>18 infringement, and the motion for relief under Rule 50 is</p> <p>19 denied. All right? Are we ready for the jury?</p> <p>20 No? Yeah. You have to rest in front of a jury.</p> <p>21 Read the stipulations, and let's go.</p> <p>22 MR. ROBERTSON: We have these exhibits in binders.</p> <p>23 We're bringing the stipulations, and then I'll be ready.</p> <p>24 THE COURT: First witness then is whom, Mr. McDonald?</p> <p>25 MR. McDONALD: Mr. Lawson will be our first witness,</p>	<p>1386</p> <p>1 they're working on it. I don't know that it's ready yet, but</p> <p>2 I'll let you know.</p> <p>3 THE COURT: Go back there and talk to them and find</p> <p>4 out.</p> <p>5 MR. McDONALD: I'm told it could be ready in ten</p> <p>6 minutes, Your Honor. I think that might be a little</p> <p>7 aggressive.</p> <p>8 THE COURT: I haven't got what I need to rule, so I</p> <p>9 don't think it's a good idea to rule. Can we have the</p> <p>10 witness --</p> <p>11 MR. STRAPP: Your Honor, a few housekeeping matters.</p> <p>12 For the record, during the Frank deposition video, the exhibits</p> <p>13 that were referenced by Mr. Frank were Plaintiff's Exhibits</p> <p>14 150, 153, 154, 155, 156, 157, 173, and 129, and the excerpted</p> <p>15 portions of the deposition transcript itself are Plaintiff's</p> <p>16 Exhibit 517 --</p> <p>17 THE COURT: My copy of it doesn't have an exhibit</p> <p>18 number on it.</p> <p>19 MR. STRAPP: That's correct, Your Honor.</p> <p>20 THE COURT: 517.</p> <p>21 MR. STRAPP: That's correct. And Your Honor --</p> <p>22 THE COURT: You need to make sure you get one.</p> <p>23 MR. STRAPP: There were a couple of typographical</p> <p>24 errors on the transcripts of the depositions of Ms. Oliver and</p> <p>25 Mr. Matias. By agreement of the parties, those have been</p>
<p>1385</p> <p>1 Your Honor. I just want to clarify, I think -- we know you</p> <p>2 wanted to get the transcripts on the Markman rulings and</p> <p>3 things, and I'm not sure when you actually want to hear that.</p> <p>4 I don't know they are ready yet.</p> <p>5 THE COURT: You did get together and what? I'm</p> <p>6 having trouble hearing you.</p> <p>7 MR. McDONALD: I'm sorry. The parties did get</p> <p>8 together over the lunch hour and combined the pages that they</p> <p>9 thought were appropriate to provide to the Court. I don't</p> <p>10 think the Court's actually got a copy of the combined version</p> <p>11 of that. I think they are working on it, so obviously we don't</p> <p>12 have it at this point.</p> <p>13 I just wanted to give a heads-up, because I wasn't</p> <p>14 sure when Your Honor wanted to address that issue. Obviously,</p> <p>15 you have to read the materials --</p> <p>16 THE COURT: When do I have to address it?</p> <p>17 MR. McDONALD: It's actually going to come off to</p> <p>18 some extent with respect to Mr. Christopherson's testimony, so</p> <p>19 it won't be too long.</p> <p>20 THE COURT: Is he the second witness?</p> <p>21 MR. McDONALD: Yes.</p> <p>22 THE COURT: Do you have a joint version that I can</p> <p>23 have?</p> <p>24 MR. McDONALD: Let me check, Your Honor, if I may. I</p> <p>25 see some bodies moving at this point, Your Honor. I think</p>	<p>1387</p> <p>1 corrected, and we have corrected versions of those deposition</p> <p>2 transcripts to hand up to Your Honor.</p> <p>3 THE COURT: Let me have them. You have to hand the</p> <p>4 clerk the originals.</p> <p>5 MR. STRAPP: This is -- Ms. Oliver's corrected</p> <p>6 transcript is Plaintiff's Exhibit 518 replacing the original</p> <p>7 Plaintiff's Exhibit 518. I'm sorry. Plaintiff's Exhibit 520</p> <p>8 this is the corrected version of Mr. Matias's deposition</p> <p>9 transcript.</p> <p>10 THE COURT: Let's do this: Let's call 518-A -- get</p> <p>11 that back and mark it. Mr. Neal, mark 518 518-A and 520, the</p> <p>12 one he just handed you 520-A, and that will be the corrected</p> <p>13 versions. All right, folks, that way we will get them</p> <p>14 straight.</p> <p>15 MR. STRAPP: Your Honor, with respect to one of the</p> <p>16 Frank exhibits that was referenced, you will recall that there</p> <p>17 was an issue that came while it was being played. Although</p> <p>18 that exhibit had never been objected to during court, Lawson</p> <p>19 suggested that they now did have an objection to part of the</p> <p>20 document, and they're asking it be redacted.</p> <p>21 I've agreed that the parties can meet and confer with</p> <p>22 that as soon as we have a minute after the day is over in</p> <p>23 court, but we haven't resolved that issue yet.</p> <p>24 THE COURT: I appreciate your confidence in my</p> <p>25 memory, but I don't remember, so I'll let you all deal with</p>

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<p>1490</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 13, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1492</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. Thank you. 11 MR. McDONALD: Yes, Your Honor. Thank you. 12 THE COURT: Do you need to see me about something 13 before the jury comes in? 14 MR. ROBERTSON: Yes, Your Honor. You had asked us to 15 take a look at those appendices with respect to our motion on 16 this implementation on a customer-by-customer basis. 17 THE COURT: Yeah. 18 MR. ROBERTSON: We have done that, and the reason I 19 raised it, Your Honor, is one of the witnesses that's going to 20 be called this morning is Ms. Hannah Raleigh. You may recall 21 she testified once already. She is involved with Lawson 22 Professional Services that has to do -- that has responsibility 23 for implementation of the Lawson software products, and we're 24 concerned that she's going to be getting into areas in and 25 presenting testimony that Lawson is going to contend are</p>
<p>1491</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1493</p> <p>1 defenses to infringement later that are directly implicated by 2 that interrogatory number 24. 3 What I have provided Your Honor with is the 4 appendices that were referenced in the answers to the 5 interrogatories, the transcript from the March 26th hearing, 6 telephonic hearing on the motion to compel, and the relevant 7 citations to the transcript where this issue came up, and I do 8 want to continue to press the motion, Your Honor. 9 We do think that the answers, even with the 10 appendices, were nowhere near what was called for and what Your 11 Honor directed Lawson to do in response to that. 12 If I might just, Your Honor, you may recall that 13 these appendices that are being referenced were provided to 14 ePlus three months before the motion to compel was presented, 15 and the appendices do not respond to the interrogatory as 16 represented by counsel for Lawson. 17 Indeed, if you look at some of the appendices, for 18 example -- 19 THE COURT: Is A appendix A? 20 MR. ROBERTSON: Yes, sir. Under the tab December 23, 21 2009, response to interrogatory number -- yeah, A is one. 22 THE COURT: March 26th is the first tab, the 23 transcript, and then there's an A behind that. Is that 24 appendix A or not? 25 MR. ROBERTSON: I believe appendix A, Your Honor, is</p>

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<p>1630</p> <p>1 requisitioning and workflow approval leading to faster</p> <p>2 order cycle times, increased standardization and</p> <p>3 reduced costs, correct?</p> <p>4 A That is correct.</p> <p>5 Q That's one of the benefits of having this kind of</p> <p>6 procurement software over the old fashioned</p> <p>7 paper-based procurement process, right?</p> <p>8 A That's correct.</p> <p>9 Q Like every invention, you want it to be doing to</p> <p>10 do something fast, better cheaper?</p> <p>11 MS. STOLL-DeBELL: Objection, Your Honor.</p> <p>12 THE COURT: Sort of.</p> <p>13 MR. ROBERTSON: I'll withdraw the question,</p> <p>14 Your Honor.</p> <p>15 THE COURT: Yes, I think so.</p> <p>16 Q Turn to the next page, sir.</p> <p>17 A Sure.</p> <p>18 Q You see the representation there under Lawson</p> <p>19 Procurement Punchout? You can seamlessly browse from</p> <p>20 Lawson's requisition self service to vendor websites.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q That's an accurate statement, right?</p> <p>24 A Yes.</p> <p>25 Q Seamlessly, right?</p>	<p>1632</p> <p>1 process flow. Do you see that?</p> <p>2 A I see it, yes.</p> <p>3 Q So this is saying how we're going to navigate</p> <p>4 through this process to build our shopping cart and</p> <p>5 then pull it back as a requisition and make purchase</p> <p>6 orders; isn't that right?</p> <p>7 A Give me a chance to review it.</p> <p>8 Q Sure.</p> <p>9 A Okay. At a very high level, yes.</p> <p>10 Q So at this high level, Lawson is representing that</p> <p>11 the first step is that Lawson requesters use this RSS</p> <p>12 screen to punch out to external vendors, correct?</p> <p>13 A That is correct.</p> <p>14 Q So then the Lawson requester is presented to the</p> <p>15 externals vendor's website to search and add items to</p> <p>16 the vendor's shopping cart. The shopping cart is</p> <p>17 being checked out and submitted, right?</p> <p>18 A That's correct.</p> <p>19 Q Then the shopping cart contents are returned back</p> <p>20 to Lawson RSS, right?</p> <p>21 A Right.</p> <p>22 Q Then the requester checks out their RSS shopping</p> <p>23 cart and requisition is sent for approval, right?</p> <p>24 A Correct.</p> <p>25 Q Once the requisition is approved, the purchase</p>
<p>1631</p> <p>1 A You have to define what seamlessly means.</p> <p>2 Q This is your document. Do you have an</p> <p>3 understanding of what "seamlessly" means?</p> <p>4 A It's not my document, sir.</p> <p>5 Q Well, it's a Lawson document. Lawson was</p> <p>6 representing that the process is seamless, right?</p> <p>7 A Well, we know --</p> <p>8 Q Lawson was representing that --</p> <p>9 THE COURT: You know, it would have just been</p> <p>10 sufficient to have left the question where it was</p> <p>11 because he already answered it was seamless and then</p> <p>12 you get into it.</p> <p>13 MR. ROBERTSON: I'll move on, Your Honor.</p> <p>14 BY MR. ROBERTSON:</p> <p>15 Q When the Lawson system punches out to the Punchout</p> <p>16 creating the partner's catalog, you remain connected</p> <p>17 to the Lawson system; is that right?</p> <p>18 A Say that again.</p> <p>19 Q Yes. When the Lawson system punches out to the</p> <p>20 Punchout creating the partner's catalog, you remain</p> <p>21 connected to the Lawson system, correct?</p> <p>22 A Correct.</p> <p>23 Q Let's take a look at the page that ends with Bates</p> <p>24 label 261, if we could.</p> <p>25 So here's the representation of this RSS Punchout</p>	<p>1633</p> <p>1 order, the PO there, is created by PO 100. That's</p> <p>2 accurate, right?</p> <p>3 A That's correct.</p> <p>4 Q Then the purchase order can be sent to the vendor</p> <p>5 using the Lawson EDI module, right?</p> <p>6 A It can be, yes.</p> <p>7 Q When the Lawson system was doing that, you</p> <p>8 remained connected to the Lawson system at all times;</p> <p>9 isn't that right, sir? Didn't you testify to that in</p> <p>10 your deposition?</p> <p>11 A It's connected, yes.</p> <p>12 Q You were asked about page 265, sir. If you could</p> <p>13 turn to that. Now, there's some questions about where</p> <p>14 the software was running on this in this Punchout</p> <p>15 demonstration. Let me just ask you, this was a joint</p> <p>16 presentation by Lawson and Trinity Information</p> <p>17 Systems, right?</p> <p>18 A Correct.</p> <p>19 Q So it's operating, as you can tell, I think you</p> <p>20 pointed to it, sir, the URL address is Trinity Health</p> <p>21 Organization, right?</p> <p>22 A That is correct.</p> <p>23 Q But after where it says TrinityHealth.org/, it</p> <p>24 says "Lawson/portal," right?</p> <p>25 A It does say that, yes.</p>

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<p style="text-align: right;">1718</p> <p>Lohkamp - Direct</p> <p>1718</p> <p>1 really with those vendors, official relationship, so the</p> <p>2 purposes of having the contract was to make it a formalized</p> <p>3 process for bringing new supported punchout partners on as well</p> <p>4 as to set up the ground rules of how we were going to work</p> <p>5 together and set the expectations with that vendor with the</p> <p>6 goal of being able to support our customers who were interested</p> <p>7 in punching out using procurement punchout to that vendor</p> <p>8 website. So the contract helps us kind of establish the</p> <p>9 expectations and how we were going to work together to support</p> <p>10 our mutual customers.</p> <p>11 Q Is it possible to use Lawson's punchout product to punch</p> <p>12 out to a vendor website if the vendor is not a supported vendor</p> <p>13 by Lawson?</p> <p>14 A Yes.</p> <p>15 Q Is it possible for Lawson's customers to connect to</p> <p>16 punchout vendors' websites without using Lawson's punchout</p> <p>17 product?</p> <p>18 MR. ROBERTSON: Objection, Your Honor, vague and</p> <p>19 ambiguous. Is this just using the internet to go to a website</p> <p>20 or using a Lawson product?</p> <p>21 MS. STOLL-DeBELL: I can ask a better question, Your</p> <p>22 Honor. I'll withdraw that.</p> <p>23 THE COURT: All right.</p> <p>24 Q Is it possible to use an internet browser to connect to a</p> <p>25 punchout vendor's website?</p>	<p style="text-align: right;">1720</p> <p>1720</p> <p>1 to connect to a customer specific private StaplesLink.com</p> <p>2 website; is that correct?</p> <p>3 MR. ROBERTSON: Objection, relevancy, Your Honor.</p> <p>4 We're talking about using a Lawson product, not using the</p> <p>5 simple internet browser. This has nothing relevant to the</p> <p>6 accused systems.</p> <p>7 THE COURT: I'm inclined to agree with him, Ms.</p> <p>8 Stoll-DeBell. I was trying to see what the difference was, but</p> <p>9 I think the objection is sustained.</p> <p>10 MS. STOLL-DeBELL: I think that's all the questions I</p> <p>11 have for right now.</p> <p>12 THE COURT: Any cross-examination?</p> <p>13</p> <p>14 CROSS-EXAMINATION</p> <p>15 BY MR. ROBERTSON:</p> <p>16 Q Good afternoon, Mr. Lohkamp.</p> <p>17 A Good afternoon.</p> <p>18 Q I understand you have these punchout trading partners that</p> <p>19 you have contracts with and punchout trading partners that you</p> <p>20 don't have contracts with; right?</p> <p>21 A Correct.</p> <p>22 Q But other than not having, for example, a defined contact,</p> <p>23 I think that's what you said; that was one of the benefits of</p> <p>24 having a contract?</p> <p>25 A That was one of the benefits, yes.</p>
<p style="text-align: right;">1719</p> <p>Lohkamp - Direct</p> <p>1719</p> <p>1 MR. ROBERTSON: Objection, Your Honor, relevancy.</p> <p>2 MS. STOLL-DeBELL: Your Honor, I think it goes --</p> <p>3 THE COURT: Why does that have anything to do with</p> <p>4 this case?</p> <p>5 MS. STOLL-DeBELL: I think it goes to the</p> <p>6 relationship and connection between Lawson and the punchout</p> <p>7 vendor and how the punchout vendor's website works.</p> <p>8 THE COURT: They are different websites. The</p> <p>9 testimony he gave earlier, or somebody gave, was if you go on</p> <p>10 the internet, you get one website. If you go through the</p> <p>11 punchout you get another, I think. Isn't that right? Ask him.</p> <p>12 I think -- if you go through the internet to get to what was --</p> <p>13 a website of somebody who is your punchout partner, you get the</p> <p>14 internet site or not, the regular site?</p> <p>15 THE WITNESS: For certain vendors, for example, like</p> <p>16 StaplesLink.com, you can go directly to StaplesLink.com versus</p> <p>17 going through punchout through a browser.</p> <p>18 THE COURT: But if you go through the punchout, it's</p> <p>19 a different website; isn't it?</p> <p>20 THE WITNESS: You would be logged in to -- it would</p> <p>21 be the same website. You'd be logged into StaplesLink.com.</p> <p>22 THE COURT: So it's true for some of them but not for</p> <p>23 all of them.</p> <p>24 THE WITNESS: I am not familiar with all of them.</p> <p>25 Q So with StaplesLink.com, you can use an internet browser</p>	<p style="text-align: right;">1721</p> <p>Lohkamp - Cross</p> <p>1721</p> <p>1 Q So we're all clear on this, it doesn't matter for a</p> <p>2 contract punchout trading partner of Lawson's or noncontract</p> <p>3 trading partner of Lawson's, the technology never changes;</p> <p>4 right?</p> <p>5 A That's correct.</p> <p>6 Q And isn't it true that the vast majority of Lawson's</p> <p>7 punchout trading partners are noncontractual; right?</p> <p>8 A Yes.</p> <p>9 Q And but yet you work with these noncontractual punchout</p> <p>10 partners to the mutual benefit of both companies just like you</p> <p>11 do with your contractual partners; right?</p> <p>12 A No.</p> <p>13 Q So, I see. Because there's a contract, you have a mutual</p> <p>14 benefit, and because you don't have a contract, there's no</p> <p>15 mutual benefit?</p> <p>16 A I thought I understood you to say they work with them the</p> <p>17 same way.</p> <p>18 Q I'm wondering -- it doesn't matter whether you have a</p> <p>19 contract or don't have a contract. It's still mutually</p> <p>20 beneficial to both Lawson and its punchout trading partners to</p> <p>21 have that relationship; right?</p> <p>22 A Yes.</p> <p>23 MR. ROBERTSON: That's all I have, Your Honor. Thank</p> <p>24 you.</p> <p>25 THE COURT: Any redirect?</p>

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<p>1789</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 14, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1791</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are. 12 THE COURT: All right. Ladies and gentlemen, I'm 13 pleased to report to you my unofficial survey that the economy 14 is recovered. For the first time in 40 years of trading at the 15 Westhampton Bakery, I had to wait 20 to 30 minutes even to get 16 served, and this the lowest period of the year for that bakery, 17 they tell me. So I just wanted you to know, but I told them I 18 was waiting because I had promised you would get your donuts 19 and I don't want to be guilty. 20 Dr. Shamos, I saw him earlier. Dr. Shamos, I remind 21 you -- everybody is renaming you, aren't they? 22 THE WITNESS: We'll see. 23 THE COURT: I remind you you are under the same oath 24 you took yesterday, sir. 25 THE WITNESS: Yes, sir.</p>
<p>1790</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1792</p> <p>1 THE COURT: Thank you. 2 3 MICHAEL I. SHAMOS, 4 a witness, called by the defendant, having been previously 5 duly sworn, testified as follows: 6 DIRECT EXAMINATION 7 BY MR. McDONALD: (resuming) 8 Q Good morning, Dr. Shamos. How are you? 9 A Good morning. I'm good. 10 Q I would like to pick up where we left off, if I got it 11 right anyway here this morning, with this slide showing some of 12 the elements of claim one of the '516 patent on this slide that 13 you put together. Can you walk us through -- 14 THE COURT: Mr. McDonald, excuse me. Just for 15 orientation purposes, when we left off, you had said that you 16 were going through each claim one by one to show, and that's 17 what you are doing. 18 MR. McDONALD: Thank you, yes. 19 THE COURT: I said it's a good time to take a break, 20 so that's what we'll be doing now, is hearing Dr. Shamos's 21 opinion on each claim that's at issue. 22 Q We have the 12 claims. We're going to take them one at a 23 time; right, Dr. Shamos? 24 A Yes. 25 Q Okay. So let's start here with what you have on your</p>

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<p>1925</p> <p>1 THE COURT: Do you have a copy of his report</p> <p>2 for him?</p> <p>3 MR. ROBERTSON: Yes, sir.</p> <p>4 THE COURT: What paragraph?</p> <p>5 MR. ROBERTSON: Paragraph 134, on page 40.</p> <p>6 THE COURT: Page 40, paragraph 134, Dr.</p> <p>7 Shamos, is what he's going to ask you about.</p> <p>8 BY MR. ROBERTSON:</p> <p>9 Q You indicate here that as a hypothetical</p> <p>10 proposition, it's possible in a sense to avoid</p> <p>11 searching an entire database each time by creating</p> <p>12 indexes that allow particular records containing</p> <p>13 specific data to be located quickly. Did you say that</p> <p>14 in that your report?</p> <p>15 A Yes, it says "in a sense."</p> <p>16 Q Thank you. You also said in this regard, a</p> <p>17 database index is similar to the index of a book which</p> <p>18 makes it unnecessary to scan the entire book to locate</p> <p>19 the occurrence of a word each time a search is</p> <p>20 performed, correct?</p> <p>21 A Yes.</p> <p>22 Q With respect to the Punchout functionality and</p> <p>23 Punchout procurement, you understand that when the</p> <p>24 customer is using that functionality with the</p> <p>25 requisition self service module, they're operating</p>	<p>1927</p> <p>1 A The phrase I'm having trouble with is</p> <p>2 "communication protocols."</p> <p>3 THE COURT: You do not know what they are?</p> <p>4 THE WITNESS: I know what they are.</p> <p>5 THE COURT: Do you not know what he means?</p> <p>6 THE WITNESS: I think I know what he means,</p> <p>7 but I think it's different from what he said.</p> <p>8 BY MR. ROBERTSON:</p> <p>9 Q What do you understand communication protocols to</p> <p>10 mean?</p> <p>11 A Well, you can't create communication protocols</p> <p>12 over the Internet. You have to use standardized</p> <p>13 communication protocols.</p> <p>14 If what you mean is Lawson's facility have the</p> <p>15 ability to connect to the vendors so that you can</p> <p>16 search the vendor's website, the answer is yes.</p> <p>17 Q And law also creates those protocols to return the</p> <p>18 data from a vendor for inclusion into a requisition</p> <p>19 and then a purchase order; isn't that right?</p> <p>20 A I'll have a lot easier time if we don't use the</p> <p>21 word "protocols." Just say mechanism and I'll agree</p> <p>22 with you.</p> <p>23 Q Well, Lawson creates that mechanism?</p> <p>24 A Yes.</p> <p>25 Q Are you familiar with the term handshake used in</p>
<p>1926</p> <p>1 within the Lawson system during the entire process,</p> <p>2 correct?</p> <p>3 A No.</p> <p>4 Q So if there were testimony in the record with</p> <p>5 respect to that, that that is the case, would that</p> <p>6 change your opinion?</p> <p>7 MR. McDONALD: Objection. He wasn't able to</p> <p>8 hear the testimony.</p> <p>9 THE COURT: That's a proper question. It's</p> <p>10 the functional equivalent of a hypothetical. That's</p> <p>11 all right.</p> <p>12 A I'm an open-minded guy. If whoever said that</p> <p>13 would explain what he meant by it, it's possible he</p> <p>14 might change my mind, but merely hearing such</p> <p>15 testimony exists doesn't change my mind.</p> <p>16 Q You're aware that it's Lawson who creates the</p> <p>17 communication protocols with its Punchout trading</p> <p>18 partners, correct?</p> <p>19 A Okay. As a general proposition, in order</p> <p>20 to connect to --</p> <p>21 Q As a general proposition, do you agree with that?</p> <p>22 Yes or no?</p> <p>23 A Repeat it then.</p> <p>24 Q It's Lawson that creates the communication</p> <p>25 protocols used in the Punchout procurement process?</p>	<p>1928</p> <p>1 that context?</p> <p>2 A Yes.</p> <p>3 Q Lawson creates that handshake, right?</p> <p>4 A Lawson implements part of that handshake, yes.</p> <p>5 Q If there were testimony in this case that Lawson,</p> <p>6 in fact, creates that handshake, would that affect</p> <p>7 your opinions in any way?</p> <p>8 A No, because I understand how handshakes work and</p> <p>9 it's a two-way street. The vendor has to do certain</p> <p>10 things, too, as part of the handshake.</p> <p>11 Q Isn't it true in this Punchout process, selecting</p> <p>12 checkout on the shopping cart releases the requisition</p> <p>13 to the next stage of process? And checkout saves</p> <p>14 items to the cart to the requisition lines, and it</p> <p>15 goes into the requisition to the next processing</p> <p>16 stage?</p> <p>17 A Yes.</p> <p>18 Q So the shopping cart then is not the same as the</p> <p>19 final requisition, correct?</p> <p>20 A I haven't opined on that. I haven't looked at it.</p> <p>21 THE COURT: You say you haven't looked at it?</p> <p>22 THE WITNESS: I haven't looked at that. I</p> <p>23 haven't considered it.</p> <p>24 Q You were asked some questions about some of these</p> <p>25 means-plus-function claim constructions. Do you</p>

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<p>1997</p> <p>1 A Yes.</p> <p>2 Q How many hours does that involve?</p> <p>3 A Not -- I don't know. Maybe five or ten hours. I'm</p> <p>4 guessing. I don't know.</p> <p>5 Q How much are you getting paid; do you know?</p> <p>6 A \$200.</p> <p>7 MR. McDONALD: No further questions.</p> <p>8 THE COURT: We need to take a little recess here, I</p> <p>9 think. We'll take a 20-minute recess.</p> <p>10</p> <p>11 (Jury out.)</p> <p>12</p> <p>13 THE COURT: Okay, we'll take a 20-minute recess.</p> <p>14</p> <p>15 (Recess taken.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1999</p> <p>1 handle that.</p> <p>2 All right. Get them, please.</p> <p>3 What are you doing with this witness? What's</p> <p>4 the purpose of this testimony?</p> <p>5 MR. McDONALD: It's to show that the TV/2</p> <p>6 system is prior art.</p> <p>7 THE COURT: It's anticipation.</p> <p>8 MR. McDONALD: It's part of the obviousness</p> <p>9 determination.</p> <p>10 THE COURT: Obviousness, excuse me. But we</p> <p>11 never did tell them that we were moving. I was trying</p> <p>12 to figure out what you were doing and I thought I knew</p> <p>13 what this was.</p> <p>14 MR. McDONALD: You did say something about</p> <p>15 that. I thought that was the segue.</p> <p>16 THE COURT: Yeah, but I didn't say now is the</p> <p>17 time, Charlie. Okay.</p> <p>18 (The jury is present.)</p> <p>19 THE COURT: All right. Ladies and gentlemen,</p> <p>20 I told you that they were about ready to move into</p> <p>21 invalidity, and they have been with this lady. They</p> <p>22 do have two of the inventors that are coming back. Is</p> <p>23 that right?</p> <p>24 MR. McDONALD: I think we'll keep it to two.</p> <p>25 Maybe three, but probably two.</p>
<p>1998</p> <p>1 (The jury is out.)</p> <p>2 THE COURT: Okay. How much more of this do</p> <p>3 we have? Thirty minutes of this witness, but what's</p> <p>4 this 20-minute video and an hour-plus video? Why do</p> <p>5 we have over an hour of a video? You remember what I</p> <p>6 told you about these videos.</p> <p>7 MR. SCHULTZ: Yes, Your Honor. The 20-minute</p> <p>8 video is a video related to the Fisher RIMS system</p> <p>9 related to the priority of it. And that's the</p> <p>10 20-minute video. Then there's a video that is Laurene</p> <p>11 McEneny, and that is related to an entire system, the</p> <p>12 PO Writer System. That video was originally two hours</p> <p>13 and 20 minutes. The parties worked together and cut</p> <p>14 that down to an hour and a half, approximately.</p> <p>15 THE COURT: You might be able to cut it down</p> <p>16 more over the weekend.</p> <p>17 MR. SCHULTZ: Yes, Your Honor.</p> <p>18 THE COURT: About 30 minutes. That's about</p> <p>19 all a jury can take of that. If it was NCIS or</p> <p>20 Housewives of Atlanta or whatever it is, they can</p> <p>21 handle something like that, but you can't take more</p> <p>22 than an hour and a half of this stuff. It's a hard</p> <p>23 dose.</p> <p>24 You have a witness over here. She knows what</p> <p>25 she's talking about, and she relates, and they can</p>	<p>2000</p> <p>1 THE COURT: Whatever. They have inventors,</p> <p>2 and it may have to do with infringement and</p> <p>3 invalidity, but now they have moved into invalidity.</p> <p>4 And what they are trying to do is -- that makes it</p> <p>5 sound like they flunked. I don't mean do that. I'm</p> <p>6 not making any comment.</p> <p>7 The general topic is the issue of</p> <p>8 obviousness, which I think was talked about in the</p> <p>9 video, and I'll tell you more about it. But that's</p> <p>10 what they're doing. And we'll try to tell you as they</p> <p>11 move from one to another kind of topic they are</p> <p>12 addressing. Nobody will be arguing it, but at least</p> <p>13 it will help you focus on what the point is.</p> <p>14 So we're now moving into obviousness with</p> <p>15 this witness, Ms. Eng. Okay.</p> <p>16 This is your cross-examination.</p> <p>17 MR. ROBERTSON: Thank you, Your Honor.</p> <p>18</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. ROBERTSON:</p> <p>21 Q Nice to see you again, Ms. Eng.</p> <p>22 A You, too.</p> <p>23 Q I understand that you were a consultant for Lawson</p> <p>24 in this case?</p> <p>25 A Yes.</p>

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<p>2001</p> <p>1 Q You indicated that you had spent five to ten</p> <p>2 hours. That was preparing for today's testimony?</p> <p>3 A Reading the material and stuff, yes.</p> <p>4 Q But you spent more time in the case than that,</p> <p>5 right? You were deposed back in May, I believe, of</p> <p>6 last year?</p> <p>7 A When I saw you?</p> <p>8 Q Yes.</p> <p>9 A Yes.</p> <p>10 Q You were also a paid consultant in a trial with</p> <p>11 SAP, right?</p> <p>12 A Yes.</p> <p>13 Q That was about what, four years ago now? 2006 or</p> <p>14 so?</p> <p>15 A Was it? Okay.</p> <p>16 Q It's difficult to remember back to just --</p> <p>17 THE COURT: She tried to block it out.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q It's difficult to remember just back four years,</p> <p>20 nevermind what we've been talking about here 18 years</p> <p>21 ago, right?</p> <p>22 A Well, that I did every day. The trial was just --</p> <p>23 Q You'd agree with me, though, that TV/2 was not</p> <p>24 commercially available back in 1995, right?</p> <p>25 A I think it was available from like '91, and then I</p>	<p>2003</p> <p>1 A I'm not sure about Volvo.</p> <p>2 Q Volvo was this demonstration that was happening</p> <p>3 over in the U.K.?</p> <p>4 A In the U.K.</p> <p>5 Q You weren't involved in that, were you?</p> <p>6 A I was not, no.</p> <p>7 Q We're going to have to not talk over each other.</p> <p>8 So just wait until I finish my question, then I'd</p> <p>9 appreciate your answer.</p> <p>10 So it was written by people in the development lab</p> <p>11 in the U.K., right?</p> <p>12 A Yes.</p> <p>13 THE COURT: What was written?</p> <p>14 MR. ROBERTSON: This TV/2 program.</p> <p>15 A Yes.</p> <p>16 Q Okay. And so it wasn't commercially available as</p> <p>17 far as you know, right, at that period?</p> <p>18 A What do you mean by commercially available?</p> <p>19 Q This program, this development lab program, they</p> <p>20 were working on in the U.K.</p> <p>21 A I mean, you couldn't go to a Best Buy and buy it,</p> <p>22 but you could get it through an IBM group.</p> <p>23 Q Let me ask you if you'd look -- there's a tab in</p> <p>24 your book that has your SAP testimony.</p> <p>25 A Okay.</p>
<p>2002</p> <p>1 think it was discontinued in '94 or something. '95</p> <p>2 maybe.</p> <p>3 Q You recall testifying under oath in the SAP trial?</p> <p>4 A No. I mean I remember testifying, yes.</p> <p>5 MR. McDONALD: Your Honor, I don't think this</p> <p>6 is impeachment. She's not denying that it wasn't on</p> <p>7 sale in '95.</p> <p>8 MR. ROBERTSON: Let me --</p> <p>9 THE COURT: Well, there was a different</p> <p>10 question, so I think it's a relevant approach. It</p> <p>11 depends on what the testimony was, doesn't it? The</p> <p>12 answer was different than the question. Fairly</p> <p>13 significantly. So let's see.</p> <p>14 MR. ROBERTSON: May I hand the witness a</p> <p>15 notebook?</p> <p>16 BY MR. ROBERTSON:</p> <p>17 Q In the 1994-95 period, when you were working with</p> <p>18 Fisher right before, I think, you left in January of</p> <p>19 '95 --</p> <p>20 A Yeah, I did.</p> <p>21 Q -- Fisher was the first customer really to use</p> <p>22 TV/2 in a production environment; isn't that right?</p> <p>23 A As far as I know in the U.S.</p> <p>24 Q Did any other customers to your knowledge ever use</p> <p>25 TV/2 in a production environment?</p>	<p>2004</p> <p>1 Q I'd like to direct you to page 1296.</p> <p>2 A Where do I see the page numbers?</p> <p>3 Q They should be in the upper right-hand corner.</p> <p>4 THE COURT: There's a little fold on the</p> <p>5 squares on the pages. An in the upper right-hand</p> <p>6 corner of each one of those little quarters is the</p> <p>7 page number, Ms. Eng. And at the bottom is page</p> <p>8 numbers, and this one is on page 16.</p> <p>9 THE WITNESS: Right.</p> <p>10 THE COURT: Go ahead.</p> <p>11 Q Do you see at page 1295 the question was asked:</p> <p>12 Was TV/2 a final release IBM product? You answered:</p> <p>13 No, I don't think so. I think Fisher was the first</p> <p>14 customer really to use it in a production environment.</p> <p>15 I had asked you that.</p> <p>16 A Okay.</p> <p>17 Q That's the time period we're in now.</p> <p>18 A Uh-huh.</p> <p>19 Q Was TV/2 an off-the-shelf product?</p> <p>20 A Like I said, they couldn't go to Best Buy and buy</p> <p>21 it. It had to be packaged with service.</p> <p>22 Q So the question was asked: So was it commercially</p> <p>23 available as far as you know? Do you see that?</p> <p>24 A Right.</p> <p>25 Q Let me finish my -- and the answer there was: No,</p>

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<p>2005</p> <p>1 not as far as I know. Correct? Yes or no? That's</p> <p>2 what it says?</p> <p>3 A That's what it says there, yes.</p> <p>4 Q Okay. Thank you.</p> <p>5 As far as you know, no one after Fisher ever used</p> <p>6 it in a commercial production environment, correct?</p> <p>7 A I left so I do not know.</p> <p>8 Q As you sit here even today, you don't know whether</p> <p>9 anybody ever used it after Fisher in a commercial</p> <p>10 production environment, right?</p> <p>11 A I do not know.</p> <p>12 Q Before working with Fisher, though, you were not</p> <p>13 aware of any other instance in which IBM integrated</p> <p>14 Technical Viewer 2 with a product to read large</p> <p>15 amounts of data; isn't that right?</p> <p>16 A Before Fisher?</p> <p>17 Q Yes.</p> <p>18 A Correct.</p> <p>19 Q Did I understand you to say that TV/2 didn't have</p> <p>20 a database, right?</p> <p>21 A It didn't have a relational database.</p> <p>22 Q It was a search program, wasn't it?</p> <p>23 A TV/2 was -- that was one of the capabilities.</p> <p>24 Q You worked on this project with Fisher, do I</p> <p>25 understand, from sometime in the middle of 1993 until</p>	<p>2007</p> <p>1 A I think that the conversion tool was just for the</p> <p>2 Fisher data, to take it from their electronic version</p> <p>3 to the TV/2.</p> <p>4 Q But you had to develop that; is that right?</p> <p>5 A Yes.</p> <p>6 Q You actually worked a lot on creating some new</p> <p>7 tags, didn't you, that needed to be programmed in</p> <p>8 order to be able to read some of the data? That was</p> <p>9 part of your job?</p> <p>10 A Can you refresh my -- did I say something about</p> <p>11 new tags?</p> <p>12 Q Didn't you work on tags during this project?</p> <p>13 A We put the tags in, yeah. The way the generalized</p> <p>14 markup language works, you would put in there -- a tag</p> <p>15 was like a part number or paragraph or a table.</p> <p>16 Q Did you actually have to create a new type of</p> <p>17 markup language, GML, as part of this project?</p> <p>18 A No, I think that was already --</p> <p>19 Q This conversion tool you talked about for this</p> <p>20 project, IBM never made that tool publicly available</p> <p>21 to anybody else; isn't that right?</p> <p>22 A I'm sorry. Can you repeat that?</p> <p>23 Q Sure. This conversion tool you just mentioned,</p> <p>24 IBM never made that publicly available to anybody else</p> <p>25 other than Fisher; is that right?</p>
<p>2006</p> <p>1 when you left in 1995?</p> <p>2 A Well, I left in -- I probably didn't work any in</p> <p>3 '95, but, yes, through '94.</p> <p>4 Q So approximately about a year and a half?</p> <p>5 A Or a year and -- not quite a year and a half</p> <p>6 probably.</p> <p>7 Q A little less than a year and a half?</p> <p>8 A Yeah.</p> <p>9 Q And the TV/2 that was integrated with Fisher, it</p> <p>10 went through serious significant modifications over</p> <p>11 that year and a half, wouldn't that be fair to say?</p> <p>12 A I know they did add some features to make it</p> <p>13 work -- have better performance.</p> <p>14 Q But you did a lot of things during that period of</p> <p>15 time on the project, correct?</p> <p>16 A What do you mean by a lot of things?</p> <p>17 Q You had to do a lot of modifications to bring this</p> <p>18 project to a conclusion eventually?</p> <p>19 A Well, we changed a lot of the process to try to do</p> <p>20 it more efficiently, yes.</p> <p>21 Q So, for example, you worked on a conversion tool.</p> <p>22 Do you remember that testimony in SAP?</p> <p>23 A Yes.</p> <p>24 Q That was an important aspect of coming up with a</p> <p>25 commercial or production prototype, correct?</p>	<p>2008</p> <p>1 A Not to my knowledge.</p> <p>2 Q Fisher contracted IBM to assist them in this</p> <p>3 project, right?</p> <p>4 A To come up with a solution, yes.</p> <p>5 Q Well, it contracted you to work with them?</p> <p>6 A Right.</p> <p>7 Q When they came with to you and presented you with</p> <p>8 this project, correct?</p> <p>9 A Correct.</p> <p>10 Q And are you aware that Fisher paid IBM \$620,000</p> <p>11 for this?</p> <p>12 A I saw that in here.</p> <p>13 Q Did you know that at the time?</p> <p>14 A I don't remember. Probably. I think I've seen</p> <p>15 those documents before.</p> <p>16 Q This Technical Viewer had proprietary tagging; is</p> <p>17 that right?</p> <p>18 A It had a proprietary database. Probably some of</p> <p>19 the tags were not like the standard. We used the</p> <p>20 standard way to do it, but they probably had our own</p> <p>21 tags, yes.</p> <p>22 Q Did you modify those tags to be able to</p> <p>23 formulate -- to be able to work in this project?</p> <p>24 MR. McDONALD: Objection to the form of the</p> <p>25 question, Your Honor.</p>

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<p>2009</p> <p>1 MR. ROBERTSON: Let me rephrase.</p> <p>2 BY MR. ROBERTSON:</p> <p>3 Q Did the tags have to be modified for this project?</p> <p>4 A I don't remember.</p> <p>5 Q Why don't you take a look then, if you could, Ms.</p> <p>6 Eng, at again your SAP testimony at page 1270.</p> <p>7 THE COURT: The way this is usually done is</p> <p>8 to ask the question that you want to ask, and then</p> <p>9 say, You testified to such and such, and you were</p> <p>10 asked such and such, and said such and such; is that</p> <p>11 right? Does that refresh your memory? And if it</p> <p>12 doesn't refresh her memory and if she answers, you</p> <p>13 know. If it doesn't refresh her memory, then the</p> <p>14 document can't be introduced into evidence.</p> <p>15 Do you want to try using it the standard way?</p> <p>16 MR. ROBERTSON: I'll try that, Your Honor.</p> <p>17 BY MR. ROBERTSON:</p> <p>18 Q I think you indicated that you used GML or</p> <p>19 generalized markup language for tags for the</p> <p>20 information in this project, correct?</p> <p>21 A We did.</p> <p>22 Q There were also other specific TV/2 tags that were</p> <p>23 used to cull out and identify specific information</p> <p>24 that needed to be created as part of this project,</p> <p>25 correct?</p>	<p>2011</p> <p>1 A I don't know that.</p> <p>2 THE COURT: What did you say?</p> <p>3 THE WITNESS: I don't know.</p> <p>4 Q Did you give it to Fisher and nobody else?</p> <p>5 A I'm sorry. I didn't hear you.</p> <p>6 Q Did you give it to Fisher and nobody else?</p> <p>7 MR. McDONALD: Objection.</p> <p>8 THE COURT: Overruled.</p> <p>9 Q I asked you did it ever become publicly known.</p> <p>10 Let me ask you now, did you give it to Fisher and</p> <p>11 nobody else?</p> <p>12 A There was a specific API for Fisher, yes.</p> <p>13 Q Did you ever give the TV/2 API to anybody else</p> <p>14 besides Fisher?</p> <p>15 A Not that I know of, no.</p> <p>16 Q And the API is necessary for this project, right?</p> <p>17 A If you want to integrate it with another system.</p> <p>18 Q Did you also work on a compiler as part of the</p> <p>19 project?</p> <p>20 A We used a compiler as part of the project.</p> <p>21 Q That had to be created as part of this project as</p> <p>22 well; isn't that right? Did you testify about that at</p> <p>23 the SAP trial?</p> <p>24 A The compiler was already there.</p> <p>25 Q But you had to make special what are called .inf</p>
<p>2010</p> <p>1 A Right, and those were there, though. They were</p> <p>2 the ones that let you select the parts data or the</p> <p>3 table.</p> <p>4 Q Do you remember working on a project that involved</p> <p>5 a shell?</p> <p>6 A Yes.</p> <p>7 Q And the shell had to be created as part of the</p> <p>8 presentation to make use of what's known as an</p> <p>9 application program interface?</p> <p>10 A The shell was just like the menu like in the Volvo</p> <p>11 pictures we saw. And then the API was the interface</p> <p>12 between the programs.</p> <p>13 Q Put you had to create a shell for this project</p> <p>14 with Fisher-Scientific, correct?</p> <p>15 A We did because they wanted to have specific things</p> <p>16 there.</p> <p>17 Q Those TV/2 tags weren't publicly available in</p> <p>18 1994; is that right?</p> <p>19 A That's right.</p> <p>20 Q In fact, isn't it the case that those TV/2 tags</p> <p>21 have never become available even to this day, right?</p> <p>22 A Not that I know of. I mean, you would need TV/2</p> <p>23 to use them.</p> <p>24 Q Did IBM ever make the TV/2 API publicly known or</p> <p>25 made available?</p>	<p>2012</p> <p>1 files?</p> <p>2 A Well, we had .inf files, but I think what we had</p> <p>3 to do is we added some features, and I think it talks</p> <p>4 about it in that one document, too. We added some</p> <p>5 features to make it faster.</p> <p>6 Q As part of the Fisher --</p> <p>7 A As part of the Fisher.</p> <p>8 Q As part of the Fisher-Scientific project?</p> <p>9 A Yes.</p> <p>10 Q And you needed those .inf files for multiple</p> <p>11 catalogs; isn't that right?</p> <p>12 A Yes.</p> <p>13 Q I'm sorry. I didn't hear you.</p> <p>14 A Yes.</p> <p>15 Q Thank you.</p> <p>16 Even after you had these .inf files containing</p> <p>17 data that was given to you, you still had problems</p> <p>18 searching them, didn't you?</p> <p>19 A Well, it depended on the size of the file.</p> <p>20 Q The bigger the file, the slower the search?</p> <p>21 A Yes.</p> <p>22 Q There were certain requirements as part of this</p> <p>23 project in order to be able to get search results back</p> <p>24 quickly, correct?</p> <p>25 MR. McDONALD: Objection, Your Honor.</p>

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<p style="text-align: right;">2013</p> <p>1 There's no relevance as to how fast the system is</p> <p>2 working.</p> <p>3 MR. ROBERTSON: I'm just asking how T/V2 was</p> <p>4 modified for this project.</p> <p>5 THE COURT: Overruled. She said it was</p> <p>6 modified for the project. The question is: How was</p> <p>7 it modified? He's going through the parts of it to</p> <p>8 see how they were modified.</p> <p>9 MR. McDONALD: Well, i it's modified in a way</p> <p>10 that only relates to speed, there's no speed that's at</p> <p>11 issue in this case. So it's irrelevant for that</p> <p>12 reason.</p> <p>13 MR. ROBERTSON: I think it's very relevant.</p> <p>14 It was a year and a half long project, Your Honor. A</p> <p>15 lot of things had to happen.</p> <p>16 THE COURT: It depends the speed. It depends</p> <p>17 on a lot of things. Overruled.</p> <p>18 BY MR. ROBERTSON:</p> <p>19 Q You also had to complete a super index for the</p> <p>20 project, correct?</p> <p>21 A That was related to making it faster.</p> <p>22 Q Did you work on the super index?</p> <p>23 A I mean, I talked to the people. I don't think I</p> <p>24 wrote that, no.</p> <p>25 Q But you know that had to be created in order to</p>	<p style="text-align: right;">2015</p> <p>1 A Probably.</p> <p>2 Q Those APIs we talked about with the TV/2, they</p> <p>3 were not publicly available in 1994, correct?</p> <p>4 A They were specific for Fisher. They were just for</p> <p>5 Fisher.</p> <p>6 Q Well, you were asked to look at Plaintiff's</p> <p>7 Exhibit No. 38, which I think is in either book, and</p> <p>8 you directed us to this --</p> <p>9 THE COURT: In the book you have got, it's</p> <p>10 back near the back.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 Q I think you directed us to this Fisher/IBM master</p> <p>13 schedule plan, do you see that?</p> <p>14 A Yes.</p> <p>15 Q Can you go to that page that ends with 53 there?</p> <p>16 THE COURT: What page?</p> <p>17 MR. ROBERTSON: Sorry. It ends 053. It's</p> <p>18 page 18 of 23, I think.</p> <p>19 BY MR. ROBERTSON:</p> <p>20 Q These are all the tasks that needed to be done for</p> <p>21 the original pilot. And then what was the second</p> <p>22 phase of the project?</p> <p>23 A The first was demo, the second was the pilot, and</p> <p>24 the third was the comprehensive.</p> <p>25 Q The comprehensive was supposed to be a working</p>
<p style="text-align: right;">2014</p> <p>1 make the search faster?</p> <p>2 A To make the search faster, yes.</p> <p>3 Q And that was because there was so much data in a</p> <p>4 catalog like the Fisher-Scientific catalog, right?</p> <p>5 A Correct.</p> <p>6 Q You mentioned that you did a lot of scanning</p> <p>7 initially in the first few weeks of the project. Did</p> <p>8 I understand that right?</p> <p>9 A Yeah.</p> <p>10 Q But at some point in time Fisher-Scientific gave</p> <p>11 you the catalog in an electronic format, is that</p> <p>12 right, as part of the project?</p> <p>13 A Yes.</p> <p>14 Q And you could not have built this system to use a</p> <p>15 Fisher catalog unless you had something like the super</p> <p>16 index to make the search faster, right?</p> <p>17 A Can you repeat that again?</p> <p>18 Q Sure. Could you have built this system for use</p> <p>19 with the catalog like Fisher without using something</p> <p>20 like this super index?</p> <p>21 A Could we have built it? We could have built it,</p> <p>22 the system, but it wouldn't be very usable.</p> <p>23 Q And that would be because these searches would be</p> <p>24 so slow, it would be quicker to just look in the paper</p> <p>25 catalog, wouldn't it?</p>	<p style="text-align: right;">2016</p> <p>1 prototype?</p> <p>2 A No, it was everything done.</p> <p>3 Q So this project, did you start right at this</p> <p>4 project from the beginning?</p> <p>5 A Me?</p> <p>6 Q Yes.</p> <p>7 A Well, I was still on maternity leave when they</p> <p>8 first started, but when I came back I started.</p> <p>9 Q When approximately was that?</p> <p>10 A Probably --</p> <p>11 Q Nine months backward?</p> <p>12 A No. I had him in April, and I was supposed to be</p> <p>13 off for six months, but I did not stay off for six</p> <p>14 months. So it was a little bit before that.</p> <p>15 Q Sometime in the summer then?</p> <p>16 A End of the summer or in September.</p> <p>17 Q I'd like you to just look at some of the things</p> <p>18 here generally. First, let me ask you, have you heard</p> <p>19 the expression Gantt chart?</p> <p>20 A Yes.</p> <p>21 Q Would you consider this to be a Gantt chart?</p> <p>22 A Yes.</p> <p>23 Q On this chart, there's a number of tasks that</p> <p>24 start out with a column that has an ID number, and it</p> <p>25 goes right through down to -- I'm going through pages</p>

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<p>2025</p> <p>1 MR. ROBERTSON: An electronic Fisher catalog.</p> <p>2 THE COURT: So you remember such a thing?</p> <p>3 THE WITNESS: I don't exactly remember if we</p> <p>4 got anything from SteBo.</p> <p>5 BY MR. ROBERTSON:</p> <p>6 Q But you do recall getting an electronic version of</p> <p>7 the Fisher catalog?</p> <p>8 A Yes. We did not have to scan anymore, yes.</p> <p>9 Q Did I understand you to say in response to my</p> <p>10 first question that you think you got it in two</p> <p>11 separate submissions?</p> <p>12 A I thought we had the image data separately and we</p> <p>13 had to go back and match it.</p> <p>14 Q That was one of the things you needed to do for</p> <p>15 this project?</p> <p>16 A Well, we had to tag everything.</p> <p>17 Q And you were involved in that, right?</p> <p>18 A Yeah, at different times.</p> <p>19 Q Is that the next task, 25, convert and tag Fisher</p> <p>20 electronic text data?</p> <p>21 A I guess so.</p> <p>22 Q Well, I don't want you to guess. Do you know or</p> <p>23 don't you know?</p> <p>24 A Do I know if I exactly worked on 25, I don't know,</p> <p>25 but I did during the project do tagging for them.</p>	<p>2027</p> <p>1 A Yes.</p> <p>2 Q Then you had to start building a comprehensive</p> <p>3 electronic sourcing program system?</p> <p>4 A Right.</p> <p>5 Q As part of that, Fisher provided you with more</p> <p>6 electronic text and image data for this comprehensive</p> <p>7 system?</p> <p>8 A Right. The way it worked was the demo was a small</p> <p>9 number of pages, and the pilot was more pages, and the</p> <p>10 comprehensive was full.</p> <p>11 Q Was it the entire catalog at that point?</p> <p>12 A I think so.</p> <p>13 Q Then No. 74 was the build test and demonstrate the</p> <p>14 comprehensive system, right?</p> <p>15 A Right.</p> <p>16 THE COURT: While he's looking for something,</p> <p>17 this part of Exhibit 38 you're looking for starts with</p> <p>18 11/11 and ends with 7 something. The 11/11 is what</p> <p>19 year?</p> <p>20 THE WITNESS: That would be '93.</p> <p>21 THE COURT: Look at the front of the</p> <p>22 document. The first page. It's dated February of</p> <p>23 '94.</p> <p>24 THE WITNESS: Right, but there are several</p> <p>25 versions of the same thing in there. Every time we</p>
<p>2026</p> <p>1 Q Then you had to deliver a demonstration of the ESP</p> <p>2 system to Fisher representatives; is that right?</p> <p>3 A Yes, that's correct.</p> <p>4 Q Then the next thing you had to do was build this</p> <p>5 pilot electronic sourcing system, correct?</p> <p>6 A Correct.</p> <p>7 Q No. 39 was a Fisher task about the interface ESP</p> <p>8 with existing Fisher systems, correct? Do you see</p> <p>9 that, No. 39?</p> <p>10 A Yes.</p> <p>11 Q And that had to be done as part of the project?</p> <p>12 A To interface with their inventory management, yes.</p> <p>13 Q And you had to also verify, convert and process</p> <p>14 and author Fisher data as part of the project,</p> <p>15 correct?</p> <p>16 A Correct. That's the same thing we had for the</p> <p>17 sample, just more data.</p> <p>18 Q More data?</p> <p>19 A Yeah.</p> <p>20 Q Let me just go through this very quickly then. So</p> <p>21 No. 52, you had to build, test and demonstrate the</p> <p>22 pilot ESP system, correct?</p> <p>23 A Yes.</p> <p>24 Q You had to provide copies and field test pilot for</p> <p>25 the ESP system that's No. 58?</p>	<p>2028</p> <p>1 came up with a new version, we put a new date. That</p> <p>2 wasn't the initial date. That was the date of this</p> <p>3 version because you'll see another one that says March</p> <p>4 something.</p> <p>5 THE COURT: March.</p> <p>6 THE WITNESS: So as you see, the 11/11 tasks</p> <p>7 are completed in this one because this is like a</p> <p>8 snapshot of February.</p> <p>9 THE COURT: So it started in 11/11/93, and it</p> <p>10 was supposed to end in July of '95?</p> <p>11 THE WITNESS: '94.</p> <p>12 THE COURT: But it wasn't finish when you</p> <p>13 left in January of '95, whatever the schedule may have</p> <p>14 been?</p> <p>15 THE WITNESS: Right.</p> <p>16 THE COURT: Okay. Pardon me for the</p> <p>17 interruption.</p> <p>18 THE WITNESS: No problem.</p> <p>19 BY MR. ROBERTSON:</p> <p>20 Q Okay. You were asked some questions about some of</p> <p>21 these brochures --</p> <p>22 A Uh-huh.</p> <p>23 Q -- that IBM had on this TV/2?</p> <p>24 A Correct.</p> <p>25 Q Let me direct you to Defendant's Exhibit No. 107.</p>

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<p>2029</p> <p>1 This is what I think you referred to as the brochure.</p> <p>2 A Right.</p> <p>3 Q Just confirm for me that this doesn't have a date</p> <p>4 on it.</p> <p>5 A It doesn't have a date on it.</p> <p>6 Q You weren't involved in the preparation of this</p> <p>7 document, correct?</p> <p>8 A I was not.</p> <p>9 Q Why don't you take a look at the document that's</p> <p>10 Defendant's Exhibit No. 230. You were asked questions</p> <p>11 about that; is that right?</p> <p>12 A Yes.</p> <p>13 Q You'd agree that this general information manual</p> <p>14 does not provide enough information for anybody as to</p> <p>15 how to integrate a TV/2 search engine with an</p> <p>16 electronic catalog, correct?</p> <p>17 A It does not. It's just general information.</p> <p>18 Q And none of those TV/2 special tags are described</p> <p>19 in the marketing brochure; is that right?</p> <p>20 A Correct.</p> <p>21 Q Neither of these two documents disclose markup</p> <p>22 language that would be used in any kind of project</p> <p>23 like the electronic sourcing project that IBM did with</p> <p>24 Fisher, correct?</p> <p>25 A No, there's no tags in here.</p>	<p>2031</p> <p>1 Q That something else was documentation that was</p> <p>2 part of the electronic sourcing project, correct?</p> <p>3 A Well, no, it came with TV/2.</p> <p>4 Q I thought I understood you to say that TV/2 wasn't</p> <p>5 in commercial production until the electronic sourcing</p> <p>6 project with Fisher; isn't that right?</p> <p>7 A If commercial means you can buy it off the shelf,</p> <p>8 no, but it was available to use in a service.</p> <p>9 Q We haven't seen any of those documents, have we,</p> <p>10 that you're referring to?</p> <p>11 A They are not here, no.</p> <p>12 Q You're aware that IBM has never claimed to be an</p> <p>13 inventor of these patents that are in suit, right?</p> <p>14 A I'm not aware --</p> <p>15 MR. McDONALD: Objection, Your Honor. Beyond</p> <p>16 the scope. Irrelevant.</p> <p>17 MR. ROBERTSON: I don't think it's beyond the</p> <p>18 scope, Your Honor. I think --</p> <p>19 THE COURT: Well, I'm not sure what relevance</p> <p>20 it has. Sustained.</p> <p>21 MR. ROBERTSON: Thank you. That's all I</p> <p>22 have, Ms. Eng.</p> <p>23</p> <p>24</p> <p>25</p>
<p>2030</p> <p>1 Q And there's no description of these .inf files in</p> <p>2 any of these documents that were necessary for the</p> <p>3 project?</p> <p>4 A Not in these two documents.</p> <p>5 Q There's no description in either of those two</p> <p>6 about this super index that needed to be developed in</p> <p>7 order to do quick searches in either of those two</p> <p>8 documents?</p> <p>9 A Not in these documents.</p> <p>10 THE COURT: These documents, are you talking</p> <p>11 about Defendant's 107 and 230?</p> <p>12 THE WITNESS: I don't know what number. It</p> <p>13 was the one with the picture on the front that he just</p> <p>14 asked me to look at before this. It wasn't in that</p> <p>15 one either.</p> <p>16 THE COURT: Okay.</p> <p>17 Q There's no technical description in this general</p> <p>18 information manual as to those things as well. That</p> <p>19 was Defendant's Exhibit No. 230, right?</p> <p>20 A There's no technical information, no.</p> <p>21 Q This wasn't intended to show somebody how to</p> <p>22 construct a system like the electronic sourcing system</p> <p>23 project, correct?</p> <p>24 A No, that was something else. This was just the</p> <p>25 general information for if you're looking at it.</p>	<p>2032</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. McDONALD:</p> <p>3 Q Ms. Eng, do you have the transcript that's first</p> <p>4 tab in that binder that Mr. Robertson gave you from</p> <p>5 your testimony in 2006?</p> <p>6 A Yes.</p> <p>7 Q Can you turn back to that page 1296 that</p> <p>8 Mr. Robertson directed you to?</p> <p>9 THE COURT: Are you going to do it right?</p> <p>10 You have to do it right, too. All of you do.</p> <p>11 MR. McDONALD: I hope so.</p> <p>12 THE COURT: Just pointing her to a deposition</p> <p>13 and reading it in doesn't get the job done. It can't</p> <p>14 come in that way. That isn't how you do it.</p> <p>15 Q Ms. Eng, in the year 1992, was the TV/2 system</p> <p>16 being offered for sale by IBM?</p> <p>17 MR. ROBERTSON: Objection, Your Honor. This</p> <p>18 was asked on direct examination. It's just going over</p> <p>19 prior testimony.</p> <p>20 THE COURT: Well, I think there was some</p> <p>21 confusion engendered as a result of your last question</p> <p>22 and he's trying to straighten it out.</p> <p>23 THE WITNESS: I can answer?</p> <p>24 THE COURT: Yes. Sorry.</p> <p>25 A It was available for people to use as a service</p>

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<p style="text-align: right;">2047</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 18, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p style="text-align: right;">2049</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendants. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: We are, Your Honor. 12 THE COURT: All right. What is this all about? 13 MR. ROBERTSON: Your Honor, good morning. 14 THE COURT: Morning. 15 MR. ROBERTSON: Last night at 6:00 p.m., plaintiff 16 received a package of something like almost 170 demonstrative 17 graphics that the defendant intends to introduce, apparently, 18 with the testimony of Dr. Shamos. 19 As a practical matter, Your Honor, I think last week 20 the defendant represented that they would wrap their case up in 21 two days. Going through 170 slides is just going to be 22 impossible to try to get through just as an initial matter 23 before we even get to the issue that we have with respect to 24 170 slides being presented to the jury. 25 THE COURT: Why are these exchanges being made now?</p>
<p style="text-align: right;">2048</p> <p style="text-align: center;">2048</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2050</p> <p style="text-align: center;">2050</p> <p>1 I thought demonstrative exhibits were supposed to have been 2 exchanged before the trial. Isn't that what the pretrial order 3 says? 4 MR. ROBERTSON: I'm not certain the pretrial order 5 says that or not. We did have an agreement among the parties 6 that we would present demonstratives at 6:00 p.m. the night 7 before a witness was to go on, but the sheer volume -- 8 THE COURT: Did I say grace over that? 9 MR. ROBERTSON: I'm sorry, sir? 10 THE COURT: Did somebody present that to me? 11 MR. ROBERTSON: I don't know that it was presented to 12 you, Your Honor. 13 THE COURT: You see what happens? I would never have 14 allowed that if I knew that was what was going on. Never in a 15 million years would I have allowed it. I've never allowed it, 16 and the reason I don't allow it is because of this kind of 17 problem. 18 MR. ROBERTSON: There had been a rule of reason 19 applied to it, Your Honor, where the demonstratives were fairly 20 limited in scope. For example, Dr. Weaver, I think we had 21 about 30 of which 24 were simply the claims or the -- you'll 22 recall the infringement charts where we were checking off the 23 boxes. 24 The problem we have now is we believe that these 25 slides substantively violate several of the Court's orders with</p>

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<p style="text-align: right;">2127</p> <p>1 MR. ROBERTSON: Objection. How would he know that?</p> <p>2 THE COURT: Your objection is to lack of foundation?</p> <p>3 MR. ROBERTSON: Yes, sir.</p> <p>4 THE COURT: Sustained.</p> <p>5 Q When you first started talking to IBM about using the TV/2</p> <p>6 system, the first time you saw that, did the TV/2 system have a</p> <p>7 graphical user interface?</p> <p>8 A Yes.</p> <p>9 MR. McDONALD: I have no further questions. Thank</p> <p>10 you.</p> <p>11 THE COURT: Ladies and gentlemen, we'll take the</p> <p>12 morning recess for 20 minutes. Go ahead and take your pads</p> <p>13 with you.</p> <p>14</p> <p>15 (Jury out.)</p> <p>16</p> <p>17 THE COURT: We'll be in recess.</p> <p>18</p> <p>19 (Recess taken.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">2129</p> <p style="text-align: center;">MOMYER - CROSS</p> <p>1 States No. 5,712,989 filed April 2, 1993, and assigned</p> <p>2 to the Fisher-Scientific Company of Pittsburgh,</p> <p>3 Pennsylvania, the disclosure of which is incorporated</p> <p>4 herein by reference; do you see that?</p> <p>5 A Yes, I do.</p> <p>6 Q Did you make that representation to the Patent</p> <p>7 Office?</p> <p>8 A Yes.</p> <p>9 Q Why did you do that, sir?</p> <p>10 A Well, RIMS was an inventory control purchasing</p> <p>11 requisition system, and we actually would use the</p> <p>12 basis for RIMS to build the component for the</p> <p>13 electronic sourcing application.</p> <p>14 Q So did you want them to be aware that such a</p> <p>15 system existed out there?</p> <p>16 A Yes.</p> <p>17 Q Can you go down to about line 35? Just the first</p> <p>18 two lines. There's a statement in your patent that</p> <p>19 says, Other requisition/purchasing systems can be</p> <p>20 grouped broadly into four classes; do you see that?</p> <p>21 A Yes.</p> <p>22 Q Just generally, if you would just refer to your</p> <p>23 patent, did you go on to describe for the Patent</p> <p>24 Office what those four classes of requisition</p> <p>25 purchasing systems were?</p>
<p style="text-align: right;">2128</p> <p>1 (The jury is present.)</p> <p>2 THE COURT: Cross-examination.</p> <p>3</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MR. ROBERTSON:</p> <p>6 Q Good morning, Mr. Momyer.</p> <p>7 A Good morning.</p> <p>8 MR. ROBERTSON: I'd like you to put the '683</p> <p>9 patent up, Exhibit No. 1, specifically column 1</p> <p>10 starting at line 10 going down to about line 17.</p> <p>11 Q You recognize this as the '683 patent, you're</p> <p>12 patent?</p> <p>13 A Yes.</p> <p>14 Q I'm sorry?</p> <p>15 A Yes.</p> <p>16 Q Did you disclose in your patent and the Patent</p> <p>17 Office that there were a number of known --</p> <p>18 THE COURT: Can you speak up, please.</p> <p>19 MR. ROBERTSON: Sure, Your Honor. I'm sorry.</p> <p>20 Q Did you disclose to the Patent Office in your</p> <p>21 patent that there are a number of known</p> <p>22 requisition/purchasing systems that manage and process</p> <p>23 requisitions and purchase orders, one such system is</p> <p>24 the Fisher-Scientific Requisition and Inventory</p> <p>25 Management System, Fisher RIMS, described in United</p>	<p style="text-align: right;">2130</p> <p style="text-align: center;">MOMYER - CROSS</p> <p>1 A Yes. We did describe some other types of</p> <p>2 requisition purchasing systems.</p> <p>3 Q If you would go down to line 60, down to about</p> <p>4 line 64. You then represented to the Patent Office</p> <p>5 that none of these known requisition/purchasing</p> <p>6 systems, including Fisher RIMS, however, provides a</p> <p>7 capability for a user readily to search for and locate</p> <p>8 information about the products that may be</p> <p>9 requisitioned and ordered in connection with the</p> <p>10 requisition/purchasing system; do you see that?</p> <p>11 A Yes.</p> <p>12 Q When you made that statement to the Patent Office,</p> <p>13 did you consider it to be truthful?</p> <p>14 A Yes.</p> <p>15 Q Do you consider it to be truthful to this day?</p> <p>16 A Yes.</p> <p>17 Q You were also asked about the ability for a user</p> <p>18 to request information about products and create</p> <p>19 orders that can be saved, printed or, in some cases,</p> <p>20 facsimiled directly to a vendor; do you recall that?</p> <p>21 A Yes, I did.</p> <p>22 Q When you print or facsimile directly to a vendor,</p> <p>23 are you working within the electronic sourcing system</p> <p>24 patent that you've described and claimed in your</p> <p>25 patents?</p>

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<p style="text-align: right;">2135</p> <p style="text-align: center;">MOMYER - CROSS 2135</p> <p>1 purchasing system for inclusion in a requisition</p> <p>2 generated by the system? Would you consider that to</p> <p>3 be an advantage of your invention?</p> <p>4 A Yes, I would.</p> <p>5 Q Did the RIMS system have that capability?</p> <p>6 A No, it did not.</p> <p>7 Q You also represented to the Patent Office that it</p> <p>8 would be further desirable to provide an electronic</p> <p>9 sourcing system that's capable of creating an order</p> <p>10 list including items located as the result of a</p> <p>11 catalog database search, and then transferring that</p> <p>12 order list of desired items to a requisitioning and</p> <p>13 purchasing system for inclusion of the catalog items</p> <p>14 as entries in a requisition generated by the system.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Did you consider that to be an advantage at the</p> <p>18 time when you applied for your patent?</p> <p>19 A Yes.</p> <p>20 Q Do you consider that to be the same or different</p> <p>21 from the capability of the RIMS system?</p> <p>22 A Well, RIMS, obviously, didn't have a catalog. So</p> <p>23 it really couldn't pull results of a search back into</p> <p>24 an order list. So, yes, it's something that RIMS did</p> <p>25 not have.</p>	<p style="text-align: right;">2137</p> <p style="text-align: center;">MOMYER - CROSS 2137</p> <p>1 testimony.</p> <p>2 A Yes.</p> <p>3 Q Can you tell us what was it that you had in mind?</p> <p>4 A All right. Okay. What I was addressing, that was</p> <p>5 in an earlier deposition, was that the first release</p> <p>6 of RIMS was wrapped up around 1991. There were many</p> <p>7 subsequent releases of RIMS that occurred after that</p> <p>8 up until I left Fisher in 2003. We continually</p> <p>9 modified and upgraded the RIMS system.</p> <p>10 Q Do you have a memory specifically in that</p> <p>11 deposition as to whether or not you were asked a</p> <p>12 question as to the ongoing development of the Fisher</p> <p>13 RIMS system?</p> <p>14 A I really don't recall.</p> <p>15 Q Why don't you then go to page 99 of that</p> <p>16 deposition transcript. That was the --</p> <p>17 MR. McDONALD: Objection, Your Honor. He</p> <p>18 just said he doesn't recall.</p> <p>19 MR. ROBERTSON: I'm going to fresh his</p> <p>20 recollection.</p> <p>21 THE COURT: Overruled.</p> <p>22 Q Can you go to the September 16, 2004 deposition</p> <p>23 you have in your book?</p> <p>24 A All right.</p> <p>25 Q Specifically, if you'd go to the bottom of page 99</p>
<p style="text-align: right;">2136</p> <p style="text-align: center;">MOMYER - CROSS 2136</p> <p>1 Q Did you consider one of the advantages of your</p> <p>2 invention to be that it could generate multiple</p> <p>3 purchase orders for multiple vendors from a single</p> <p>4 requisition?</p> <p>5 A Yes, I do.</p> <p>6 Q Did the RIMS system have that capability?</p> <p>7 A No.</p> <p>8 Q Was there any means for selecting product catalogs</p> <p>9 to search disclosed in the RIMS '989 patent?</p> <p>10 A No.</p> <p>11 Q You were ask some questions about how many</p> <p>12 versions the RIMS system went through when it was</p> <p>13 being used by the customer service representatives.</p> <p>14 Do you know as you sit here today how many versions</p> <p>15 there were?</p> <p>16 A No, I can't say. There are quite a few.</p> <p>17 Q Can you give us give your best estimate?</p> <p>18 A Thirty, 40 versions.</p> <p>19 Q You were directed to your deposition with respect</p> <p>20 to when the RIMS development wrapped up. Do you</p> <p>21 recall that?</p> <p>22 A Yes.</p> <p>23 Q And at the time you indicated, I thought I</p> <p>24 understood, you wanted to follow-up on your answer</p> <p>25 with respect to that when you were directed to your</p>	<p style="text-align: right;">2138</p> <p style="text-align: center;">MOMYER - CROSS 2138</p> <p>1 starting at about line 20. If you could read over to</p> <p>2 the top of page 100.</p> <p>3 A Page --</p> <p>4 Q 99 starting at line 20 at the bottom.</p> <p>5 A Okay.</p> <p>6 Q And going over.</p> <p>7 A Sorry, Mr. Robertson. I'm having trouble with the</p> <p>8 page. 93, 94 to 97, 98 to what?</p> <p>9 MR. ROBERTSON: 99, starting at line 20. It</p> <p>10 says, Question: Welcome back.</p> <p>11 A 99, line 20, yes, I see that.</p> <p>12 Q Why don't you read that over to page 100 down</p> <p>13 through line 9. Just read it to yourself, sir.</p> <p>14 A How far did you want me to read?</p> <p>15 Q Down to line 9.</p> <p>16 A Okay.</p> <p>17 Q Now, you were asked a question concerning when the</p> <p>18 RIMS product was complete. Do you see that shortly</p> <p>19 after the luncheon break?</p> <p>20 A Yes.</p> <p>21 Q Does that refresh your recollection now as to what</p> <p>22 you told the attorney under oath in your testimony as</p> <p>23 to when the RIMS system was completed?</p> <p>24 A Yes.</p> <p>25 Q What does it refresh your recollection to be and</p>

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<p style="text-align: right;">2139</p> <p style="text-align: center;">MOMYER - CROSS 2139</p> <p>1 what did you indicate there?</p> <p>2 A Pretty much what I just said. We continue</p> <p>3 developing RIMS up until I left Fisher.</p> <p>4 MR. McDONALD: Your Honor, I don't know what</p> <p>5 he's referring to at this point, but I think the</p> <p>6 question and answer should just be red.</p> <p>7 MR. ROBERTSON: I'm happy to do that, Your</p> <p>8 Honor.</p> <p>9 THE COURT: He asked if it refreshed his</p> <p>10 recollection, and he said yes. What was the</p> <p>11 recollection that was refreshed? He's entitled to</p> <p>12 answer how it was refreshed. And if you'd like to</p> <p>13 read the question and answer, both of you, go ahead.</p> <p>14 BY MR. ROBERTSON:</p> <p>15 Q Well, I thought you had answered the question, but</p> <p>16 I understood you to say it refreshed your</p> <p>17 recollection. So what recollection was refreshed by</p> <p>18 referring to this testimony that you gave under oath?</p> <p>19 A My recollection was that the RIMS system was an</p> <p>20 evolutionary system that continued to be developed</p> <p>21 over a period of time up to and through 2000, 2003.</p> <p>22 Q Is it your testimony there under oath consistent</p> <p>23 with your recollection now?</p> <p>24 A Yes.</p> <p>25 Q Can we just go to the RIMS patent? The RIMS</p>	<p style="text-align: right;">2141</p> <p style="text-align: center;">MOMYER - CROSS 2141</p> <p>1 invention?</p> <p>2 A Yes, to the best of my understanding we did.</p> <p>3 Q I want to talk to you a little bit about</p> <p>4 cross-referencing in the RIMS system. Do you recall</p> <p>5 being directed to sections in the RIMS patent?</p> <p>6 A Yes, I do.</p> <p>7 Q In your electronic -- well, let me ask you this</p> <p>8 basic question. Is the cross-referencing, as</p> <p>9 identified in the RIMS patent, the same</p> <p>10 cross-referencing as utilized in your invention of the</p> <p>11 electronic sourcing system?</p> <p>12 A No, it's not.</p> <p>13 Q Can you tell us how it's different?</p> <p>14 A The cross reference in the RIMS system was</p> <p>15 intended to be a means to do a look-up from a</p> <p>16 competitor or vendor's catalog number, part number,</p> <p>17 over to Fisher, and always convert it to that. The</p> <p>18 cross referencing in the electronic sourcing was much</p> <p>19 broader in that it didn't specifically cross reference</p> <p>20 you to any specific Fisher part number. It wasn't</p> <p>21 tied back to a specific Fisher part number.</p> <p>22 Q Let me ask you this about the RIMS system. If you</p> <p>23 were able to identify a part number, for example, of</p> <p>24 your competitor, was the RIMS system then able to</p> <p>25 source it from that vendor?</p>
<p style="text-align: right;">2140</p> <p style="text-align: center;">MOMYER - CROSS 2140</p> <p>1 system is mentioned multiple times in your patent; is</p> <p>2 that right?</p> <p>3 A Yes, it is.</p> <p>4 Q I've got just a graphic here of your '683 patent.</p> <p>5 If we could just go along. Do you know how many times</p> <p>6 RIMS is mentioned in this patent?</p> <p>7 A No, I don't.</p> <p>8 Q I've indicated here in red in each instance that</p> <p>9 the RIMS system or the RIMS features or capabilities</p> <p>10 are described or as modified. If we could just scan</p> <p>11 through this. This is column 1 and 2, there's 3 and</p> <p>12 4, 5 and 6, 7 and 8, 10, columns 11 and 12, 13, 14,</p> <p>13 15, 16, 18. All right. Would it surprise you, sir,</p> <p>14 if you disclosed RIMS functionality and feature in</p> <p>15 your patent more than 55 times in your patent</p> <p>16 application?</p> <p>17 A No.</p> <p>18 Q You weren't trying to mislead the Patent Office by</p> <p>19 withholding descriptions of what the RIMS capability</p> <p>20 was, were you?</p> <p>21 A No, I wasn't.</p> <p>22 Q Can you tell us whether or not you think you fully</p> <p>23 disclosed the features and capability and the</p> <p>24 revisions and modifications that were necessary in</p> <p>25 order to come up with your electronic sourcing</p>	<p style="text-align: right;">2142</p> <p style="text-align: center;">MOMYER - CROSS 2142</p> <p>1 A In the RIMS system?</p> <p>2 Q Yes.</p> <p>3 A It would identify the part number. Which part</p> <p>4 number?</p> <p>5 Q The part number of the competitor.</p> <p>6 A No, it would always -- in the RIMS system, you</p> <p>7 would always translate back to the Fisher part number.</p> <p>8 Q So in other words, you were trying to cross</p> <p>9 reference to a part number so you could then find a</p> <p>10 corresponding Fisher product to sell to the customer;</p> <p>11 is that right?</p> <p>12 A That's correct.</p> <p>13 Q In your electronic sourcing system, does the</p> <p>14 customer, the user, have the ability using the cross</p> <p>15 reference table to purchase the actual item from one</p> <p>16 vendor, another vendor, or multiple vendors?</p> <p>17 MR. McDONALD: Objection, Your Honor. The</p> <p>18 cross-reference table was a term that the Court has</p> <p>19 used in its claim constructions, and I think it's</p> <p>20 unclear here because there's nothing in that</p> <p>21 definition that is specific to which part it's being</p> <p>22 converted to.</p> <p>23 MR. ROBERTSON: I'll rephrase the question.</p> <p>24 Q Did the electronic sourcing system have the</p> <p>25 capability to identify the same or similar products</p>

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<p style="text-align: right;">2143</p> <p style="text-align: center;">MOMYER - CROSS 2143</p> <p>1 from multiple vendors, your invention?</p> <p>2 A Yes.</p> <p>3 Q Could you then source it from those multiple</p> <p>4 vendors?</p> <p>5 A Yes.</p> <p>6 Q Could you then purchase it from those multiple</p> <p>7 vendors?</p> <p>8 A Yes.</p> <p>9 Q Did the RIMS system have that capability at any</p> <p>10 time, way, shape or form?</p> <p>11 A No.</p> <p>12 Q Did you consider that to be one of the advantages</p> <p>13 of your electronic sourcing invention?</p> <p>14 A Yes.</p> <p>15 Q Can we go to I think it's Plaintiff's Exhibit</p> <p>16 No. 10, which is the '989 patent. It's at the very</p> <p>17 back of Volume II, Mr. Momyer.</p> <p>18 A Okay.</p> <p>19 MR. ROBERTSON: If you could blow up the --</p> <p>20 we're going to the page that ends with 910.</p> <p>21 Q The lower right-hand corner, the lowest number</p> <p>22 there.</p> <p>23 A Right. Okay.</p> <p>24 Q There's a table there that you were asked some</p> <p>25 questions about --</p>	<p style="text-align: right;">2145</p> <p style="text-align: center;">MOMYER - CROSS 2145</p> <p>1 asked about product type 05, 06. I want to now point</p> <p>2 out that product type 07 in this electronic sourcing</p> <p>3 patent is third party vendor items that are part of</p> <p>4 the system differentiating the RIMS patent, which he</p> <p>5 was asked questions about in the electronic sourcing</p> <p>6 patent.</p> <p>7 MR. McDONALD: It's not in the claim, Your</p> <p>8 Honor. That's why we object to it.</p> <p>9 MR. ROBERTSON: Multiple catalogs are in the</p> <p>10 claims, Your Honor, and there were multiple vendor</p> <p>11 catalogs, vendors, supplier, manufacturer. And that's</p> <p>12 what type 07 products are.</p> <p>13 MR. McDONALD: That's not what type 07</p> <p>14 products are.</p> <p>15 THE COURT: I tell you what, why don't you</p> <p>16 ask him, and on redirect you can deal with it.</p> <p>17 What are type 07 products, Mr. --</p> <p>18 MR. ROBERTSON: Let me just so if I can find</p> <p>19 it so we can reference.</p> <p>20 BY MR. ROBERTSON:</p> <p>21 Q If we can go to appendix 1 of the '683 patent?</p> <p>22 THE COURT: Figure 1?</p> <p>23 MR. ROBERTSON: Appendix 1, Your Honor. Let</p> <p>24 me direct you to that.</p> <p>25 Q It's on the page that has column 19. Do you see</p>
<p style="text-align: right;">2144</p> <p style="text-align: center;">MOMYER - CROSS 2144</p> <p>1 MR. ROBERTSON: If you could put them</p> <p>2 together, please.</p> <p>3 Q -- about 05 and 06 product types. Do you see</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q This customer owned item located in customer</p> <p>7 warehouse at or near customer site.</p> <p>8 A Yes.</p> <p>9 Q Tracking that item in the inventory of the</p> <p>10 customer, is that a service that Fisher was providing</p> <p>11 for its customers?</p> <p>12 A Yes, it was.</p> <p>13 Q Using the RIMS system, could I use that product</p> <p>14 type to, within the system, order product from a third</p> <p>15 party vendor?</p> <p>16 A No.</p> <p>17 Q Is there any type 7 product identified in that</p> <p>18 table?</p> <p>19 A No, there's not.</p> <p>20 Q Was there a product type 7 in your electronic</p> <p>21 sourcing patent?</p> <p>22 MR. McDONALD: Objection, Your Honor. It's</p> <p>23 outside the scope of direct and also the claims have</p> <p>24 nothing to do with the product type 07.</p> <p>25 MR. ROBERTSON: Your Honor, the question was</p>	<p style="text-align: right;">2146</p> <p style="text-align: center;">MOMYER - CROSS 2146</p> <p>1 in there this is a requisition header?</p> <p>2 A Yes.</p> <p>3 Q In the lower left-hand side there's a reference to</p> <p>4 vendor. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q The Fisher RIMS System didn't have that vendor as</p> <p>7 part of a requisition system; is that right?</p> <p>8 A That's correct.</p> <p>9 Q Can we go back to that Fisher RIMS patent at table</p> <p>10 1, column 37? It was PX 10. Table 1 there in the</p> <p>11 RIMS patent, PX 10, is an order header information.</p> <p>12 Are you with me?</p> <p>13 A Yes.</p> <p>14 Q Is a vendor identified anywhere in that order</p> <p>15 header information for that requisition?</p> <p>16 A In table 1?</p> <p>17 Q Yes.</p> <p>18 A No.</p> <p>19 Q You'd agree with me by the time that you were</p> <p>20 applying for this -- let me ask you this. But when</p> <p>21 you were applying for the patent application that led</p> <p>22 to the patents that are at issue here in August of</p> <p>23 1994, there was a RIMS system in operation, correct?</p> <p>24 A Yes.</p> <p>25 Q Notwithstanding that, did Fisher devote</p>

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<p style="text-align: right;">2147</p> <p style="text-align: center;">MOMYER - CROSS 2147</p> <p>1 significant resources to develop the electronic</p> <p>2 sourcing system?</p> <p>3 A Yes.</p> <p>4 Q Did they devote personnel to it?</p> <p>5 A Yes.</p> <p>6 Q Including yourself, Mr. Kinross, Mr. Johnson and</p> <p>7 Mr. Melly?</p> <p>8 A Yes.</p> <p>9 Q Did they devote considerable financial resources</p> <p>10 to developing the electronic sourcing system?</p> <p>11 A Yes.</p> <p>12 Q Did they subcontract with IBM and pay them a</p> <p>13 considerable amount of money to work with you for more</p> <p>14 than a year and a half to develop the electronic</p> <p>15 sourcing system?</p> <p>16 MR. McDONALD: Objection, Your Honor. It's</p> <p>17 related to commercial embodiment, not the scope of the</p> <p>18 claims and the filing. So it's irrelevant.</p> <p>19 MR. ROBERTSON: It's part of the invention</p> <p>20 story. It's part of the development of this</p> <p>21 invention.</p> <p>22 THE COURT: Sustained.</p> <p>23 Q Let me ask you this. If the RIMS patent could do</p> <p>24 everything that the electronic sourcing patent could</p> <p>25 do, why would the company go and expend that effort to</p>	<p style="text-align: right;">2149</p> <p>1 BY MR. McDONALD:</p> <p>2 Q You were asked some questions in this area by</p> <p>3 Mr. Robertson. I just want to clarify. You were</p> <p>4 saying that all these statements in this column were</p> <p>5 truthful in your belief, correct?</p> <p>6 A Yes.</p> <p>7 Q If we go to line 18 there, beginning with the</p> <p>8 known. Excuse me, line 8. I'm sorry. Line 8,</p> <p>9 beginning with the sentence, "The known computer</p> <p>10 systems for searching vendor catalogs are limited in</p> <p>11 that only one such vendor catalog is accessible to a</p> <p>12 user at any given time." Do you see that sentence?</p> <p>13 A Yes.</p> <p>14 Q Wasn't it true that the TV/2 system was a known</p> <p>15 computer system for searching vendor catalogs that</p> <p>16 wasn't limited to just searching one vendor catalog at</p> <p>17 a given time?</p> <p>18 MR. ROBERTSON: Objection, lacks foundation.</p> <p>19 THE COURT: Overruled.</p> <p>20 A I thought I mentioned I didn't believe that the</p> <p>21 TV/2, one, could search multiple documents and, two,</p> <p>22 when it was presented to us had the ability to search</p> <p>23 a catalog.</p> <p>24 Q You didn't think TV/2 could search a catalog?</p> <p>25 A No.</p>
<p style="text-align: right;">2148</p> <p style="text-align: center;">MOMYER - CROSS 2148</p> <p>1 come up with this new patent and apply for patent and</p> <p>2 pay all that money if that was the case to get a</p> <p>3 patent from the Patent Office?</p> <p>4 MR. McDONALD: Objection. Lack of</p> <p>5 foundation.</p> <p>6 THE COURT: Overruled.</p> <p>7 A I don't know why it would invest that if RIMS</p> <p>8 could do all of that.</p> <p>9 MR. ROBERTSON: Thank you. I have no further</p> <p>10 questions.</p> <p>11 THE COURT: Redirect?</p> <p>12 MR. McDONALD: Yes, please.</p> <p>13 REDIRECT EXAMINATION</p> <p>14 BY MR. McDONALD:</p> <p>15 Q If we could go back to the '683 patent, please,</p> <p>16 Exhibit 1. Go back to column 2.</p> <p>17 THE COURT: He needs to get the book first.</p> <p>18 A Which column?</p> <p>19 Q Column 2.</p> <p>20 A Okay.</p> <p>21 Q Now, in column 2 --</p> <p>22 MR. McDONALD: Could we put that up on the</p> <p>23 screen? We have to have switch the systems, I guess.</p> <p>24 If we could blow up column 2.</p>	<p style="text-align: right;">2150</p> <p>1 MR. ROBERTSON: Objection.</p> <p>2 MR. McDONALD: I'll rephrase that.</p> <p>3 Q It was your understanding when you started working</p> <p>4 with IBM that the TV/2 system could not search a</p> <p>5 catalog?</p> <p>6 A Search a document.</p> <p>7 Q That's a different question, Mr. Momyer. My</p> <p>8 question is when you started working with IBM, didn't</p> <p>9 you know that the TV/2 system was fully capable of</p> <p>10 searching catalogs?</p> <p>11 A No, not to the requirements that we needed it to.</p> <p>12 Q You knew it could search catalogs, though, right?</p> <p>13 A It could search a document. If you want to</p> <p>14 consider a catalog a document, then --</p> <p>15 Q Wasn't that exactly the sort of document that the</p> <p>16 TV/2 system was designed to work with was a catalog?</p> <p>17 A That's not what was presented to us.</p> <p>18 Q Do you remember -- did IBM ever communicate to you</p> <p>19 in your experience that the TV/2 system was actually</p> <p>20 designed to work with documents specifically including</p> <p>21 parts catalogs?</p> <p>22 A We actually went there with the intent of -- that</p> <p>23 that was a requirement for us to be able --</p> <p>24 Q I have a different question for you. My question</p> <p>25 is: Did IBM, anybody from IBM, ever communicate to</p>

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<p style="text-align: right;">2151</p> <p>1 you that the TV/2 system was capable of searching</p> <p>2 parts catalogs?</p> <p>3 A I'm sure it came up during the discussions when I</p> <p>4 was at the meeting as far as being able to search a</p> <p>5 document, a list of products, and find some keywords,</p> <p>6 find some products.</p> <p>7 Q In fact, isn't it true that the TV/2 system was</p> <p>8 specifically designed to work with a CD ROM that could</p> <p>9 have multiple catalogs on it?</p> <p>10 A I don't recall that.</p> <p>11 Q All right. So when you said this statement here</p> <p>12 was truthful, you're saying basically as far as you</p> <p>13 know without really knowing the details about the TV/2</p> <p>14 system, is that what meant by that?</p> <p>15 MR. ROBERTSON: I object to the form of that</p> <p>16 question.</p> <p>17 THE COURT: Sustained.</p> <p>18 BY MR. McDONALD:</p> <p>19 Q Let's go to the next sentence. They are also</p> <p>20 limited in that they can only create an order within</p> <p>21 the particular vendor catalog database. Do you see</p> <p>22 that sentence?</p> <p>23 A Yes.</p> <p>24 Q Did you understand, was there any limitation on</p> <p>25 the TV/2's system ability to communicate with the RIMS</p>	<p style="text-align: right;">2153</p> <p>1 I really don't.</p> <p>2 Q You do recall that the TV/2 system was designed to</p> <p>3 integrate with order entry inventory management</p> <p>4 systems, don't you?</p> <p>5 A No, I don't. I know it had an interface</p> <p>6 capability, but no, I don't recall that.</p> <p>7 Q Let's go back to Defendant's Exhibit 107. And go</p> <p>8 to the last page of Defendant's Exhibit 107. This is</p> <p>9 the Technical Viewer/2 brochure.</p> <p>10 And the third bullet point on the left, if we</p> <p>11 could blow that one specifically up.</p> <p>12 MR. ROBERTSON: Your Honor, I object.</p> <p>13 There's no foundation this witness even recalled this</p> <p>14 at the time, and he testified that he didn't recall it</p> <p>15 except that he was shown it later on at some point</p> <p>16 during the enforcement actions in this case.</p> <p>17 MR. McDONALD: The third bullet point, it's</p> <p>18 specific to this language in column 2.</p> <p>19 MR. ROBERTSON: It's outside the scope of my</p> <p>20 direct. I didn't ask the witness any questions about</p> <p>21 this document.</p> <p>22 MR. McDONALD: He asked him about whether</p> <p>23 there were systems that could interact with the</p> <p>24 requisition purchasing system that he knew of.</p> <p>25 MR. ROBERTSON: I asked if that statement was</p>
<p style="text-align: right;">2152</p> <p>1 system regarding multiple catalogs from multiple</p> <p>2 vendors?</p> <p>3 A Well, my understanding, I didn't think the TV/2</p> <p>4 system as it was presented to us could handle multiple</p> <p>5 catalogs and could not search multiple catalogs. That</p> <p>6 was my understanding. That's the reason we did the</p> <p>7 development that we did.</p> <p>8 Q In the next sentence then, do you see where it</p> <p>9 says, They cannot source items to be requisitioned</p> <p>10 from a database containing multiple catalogs, which is</p> <p>11 what we have already been talking about, or interact</p> <p>12 with a requisition purchasing system, such as Fisher</p> <p>13 RIMS, to create a purchase order or orders including</p> <p>14 the items located from that sourcing operation? Do</p> <p>15 you see that part of the sentence beginning with the</p> <p>16 word "interact," Mr. Momyer?</p> <p>17 A Yes, I do.</p> <p>18 Q Wasn't it true that when Fisher started working</p> <p>19 with IBM, the TV/2 system was already capable of</p> <p>20 interacting with a requisition purchasing system such</p> <p>21 as the Fisher RIMS System to create a purchase order</p> <p>22 or orders including the items located from that</p> <p>23 sourcing operation?</p> <p>24 A Once again, I'm probably not the best person to</p> <p>25 ask this because I don't recall that being brought up.</p>	<p style="text-align: right;">2154</p> <p>1 truthful, not anything about this document.</p> <p>2 THE COURT: Objection is sustained.</p> <p>3 BY MR. McDONALD:</p> <p>4 Q Let's go back to column 2 of the '683 patent and</p> <p>5 pick up where we left off there. I think that would</p> <p>6 be at column 2, line 18. The next sentence.</p> <p>7 You were asked about this sentence that says, Thus</p> <p>8 it would be desirable to provide an electronic</p> <p>9 sourcing system that provides a means for transferring</p> <p>10 information between a requisition purchasing system</p> <p>11 that may use the results of a search of product</p> <p>12 information and a means for searching large volumes of</p> <p>13 product information such as would be included in a</p> <p>14 vendor product catalog or catalogs, right, Mr. Momyer?</p> <p>15 A Yes.</p> <p>16 Q Isn't it true that the TV/2 system was already a</p> <p>17 system that provided a means for transferring</p> <p>18 information between a requisition purchasing system</p> <p>19 that may use the results of a search of product</p> <p>20 information and a means for searching large volumes of</p> <p>21 products' information such as would be included in a</p> <p>22 vendor product catalog or catalogs?</p> <p>23 A It did have a means for transferring information.</p> <p>24 That's the reason that we selected it is that we could</p> <p>25 take advantage of that and customize it to meet our</p>

<p style="text-align: right;">2155</p> <p>1 requirements.</p> <p>2 Q And TV/2 also had the means for searching through</p> <p>3 large volumes of product information, right?</p> <p>4 A To an extent. There were some changes we had to</p> <p>5 make to allow us to have multiple catalogs.</p> <p>6 Q That was one of the features that the TV/2 system</p> <p>7 touted by IBM to Fisher, specifically the feature of</p> <p>8 searching large volumes of product information?</p> <p>9 MR. ROBERTSON: Objection. Lacks foundation.</p> <p>10 It calls for hearsay as well.</p> <p>11 THE COURT: Overruled.</p> <p>12 A They did say they could search large volumes of</p> <p>13 information, yes.</p> <p>14 Q Let's go to the next sentence. I think we have</p> <p>15 already covered this one, Mr. Momyer, in a little</p> <p>16 different form, but let's just take a look at it here.</p> <p>17 Do you see this sentence, also one Mr. Robertson asked</p> <p>18 you about, "It would also be desirable to provide an</p> <p>19 electronic sourcing system that is capable of</p> <p>20 searching a database containing at least two vendor</p> <p>21 product catalogs for product information." Do you see</p> <p>22 that?</p> <p>23 A Yes, I do.</p> <p>24 Q Isn't it true that the TV/2 system already had the</p> <p>25 capability of searching a database containing at least</p>	<p style="text-align: right;">2157</p> <p>1 that being a capability of the system.</p> <p>2 Q Well, could you refer to -- could we refer to the</p> <p>3 brochure, PX 107? I'll just ask you if this refreshes</p> <p>4 your recollection, Mr. Momyer. The third page of</p> <p>5 Exhibit 107, that third paragraph.</p> <p>6 A DX?</p> <p>7 Q 107. Does reviewing that paragraph refresh your</p> <p>8 recollection as to whether or not the IBM TV/2 system</p> <p>9 had the capability of creating a shopping list?</p> <p>10 A This is the same document I said I did not see.</p> <p>11 And the last time I recall seeing it -- the first I</p> <p>12 recall seeing it was 2004 when we had the first case.</p> <p>13 Q I'm just asking if it refreshes your recollection.</p> <p>14 If it doesn't, it doesn't.</p> <p>15 A No.</p> <p>16 Q Now, you were asked whether the patents mention</p> <p>17 the RIMS system. The patents involved in this suit,</p> <p>18 the three alleged to be infringed here. Do your three</p> <p>19 patents-in-suit also mention the TV/2 system several</p> <p>20 times?</p> <p>21 A I believe it does.</p> <p>22 Q But in addition to that, the TV/2 system was</p> <p>23 specifically disclosed to the Patent Office as</p> <p>24 publications and listed on the cover page of the</p> <p>25 patent in addition to being listed in the patent</p>
<p style="text-align: right;">2156</p> <p>1 two vendor product catalogs for product information</p> <p>2 before Fisher even started working with IBM?</p> <p>3 A Not that I understood. That's some of the reason</p> <p>4 we did the development we did, to allow us to provide</p> <p>5 for multiple catalogs.</p> <p>6 Q Do you know one way or the other whether the TV/2</p> <p>7 system had that capability?</p> <p>8 MR. ROBERTSON: Objection.</p> <p>9 THE COURT: He use answered it. He said it</p> <p>10 did not to his knowledge.</p> <p>11 MR. McDONALD: I just want to clarify.</p> <p>12 THE COURT: I want you to move on. He</p> <p>13 answered. Let's go on.</p> <p>14 Q Let's go to the next sentence. I think this is</p> <p>15 basically repetitive of what we have already talked</p> <p>16 about. So we won't go through this one in detail.</p> <p>17 Let's go to the next sentence after this.</p> <p>18 You were also asked about this one regarding an</p> <p>19 order list, right, Mr. Momyer?</p> <p>20 A Yes.</p> <p>21 Q Isn't it true that the TV/2 system as it existed</p> <p>22 when Fisher started working with IBM had the</p> <p>23 capability of generating a shopping list that could be</p> <p>24 transferred to an order system?</p> <p>25 A I think we've gone through this. I don't recall</p>	<p style="text-align: right;">2158</p> <p>1 itself, right?</p> <p>2 MR. ROBERTSON: Objection. This was asked on</p> <p>3 direct examination.</p> <p>4 THE COURT: Already been there and he didn't</p> <p>5 go into it. Exceeds the scope of cross. Sustained.</p> <p>6 BY MR. McDONALD:</p> <p>7 Q I think you were asked about the RIMS patent.</p> <p>8 Could we turn to the RIMS patent, please, Plaintiff's</p> <p>9 Exhibit 10? If we could turn to column 37.</p> <p>10 A Column 37. All right.</p> <p>11 Q There's that first table, No. 1, order header</p> <p>12 information. Do you see that?</p> <p>13 A Yes.</p> <p>14 Q I want to make sure I have the right chart here,</p> <p>15 Mr. Momyer. I want to just verify. But you were</p> <p>16 asked whether a particular table did or did not</p> <p>17 include a reference to a vendor. Do you recall that?</p> <p>18 A Yes.</p> <p>19 Q And that was in the RIMS patent, right?</p> <p>20 A Yes.</p> <p>21 Q Is this the right table that I've got here?</p> <p>22 A This is the one that we talked about, yes.</p> <p>23 MR. McDONALD: Could we back out to the full</p> <p>24 page, column 37 and 38, and look at the table</p> <p>25 immediately to the right of table 1, please. And blow</p>

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<p style="text-align: right;">2175</p> <p style="text-align: center;">KINROSS - DIRECT 2175</p> <p>1 Viewer.</p> <p>2 Q Did IBM do that through that process that you just</p> <p>3 described?</p> <p>4 A Did they do it? They tried to do it. I don't</p> <p>5 think they were completely successful.</p> <p>6 Q It was their job as part of the project, though,</p> <p>7 to do that conversion?</p> <p>8 A Yes. And what their programs couldn't do, they do</p> <p>9 manually.</p> <p>10 Q So one way or the other they got it into their</p> <p>11 system?</p> <p>12 A Yes.</p> <p>13 Q And that's part of what Fisher paid them for,</p> <p>14 correct?</p> <p>15 A Right.</p> <p>16 Q And that IBM system as it existed when Fisher</p> <p>17 first started working with IBM, it did have the</p> <p>18 ability to do keyword searches, right?</p> <p>19 A Correct.</p> <p>20 Q It had the ability to search a document, a</p> <p>21 complete document, or a list of selected topics,</p> <p>22 right?</p> <p>23 A I don't think the list of selected topics was part</p> <p>24 of it.</p> <p>25 Q Could you turn to Defendant's Exhibit 105, please,</p>	<p style="text-align: right;">2177</p> <p style="text-align: center;">KINROSS - DIRECT 2177</p> <p>1 MR. McDONALD: It should be in the same</p> <p>2 volume as 107.</p> <p>3 Q Mr. Kinross, have you seen that version that we</p> <p>4 were first looking at there that was actually missing</p> <p>5 some of the pages of this technical bulletin?</p> <p>6 THE COURT: Do you have a document called 230</p> <p>7 over there?</p> <p>8 THE WITNESS: Yes, I do.</p> <p>9 MR. McDONALD: You don't have 230?</p> <p>10 THE WITNESS: I very 230.</p> <p>11 THE COURT: Well, it's more important you</p> <p>12 have it than I have it.</p> <p>13 THE WITNESS: It has blank pages in it. Page</p> <p>14 18 is completely blank.</p> <p>15 THE COURT: He doesn't have a complete copy.</p> <p>16 MR. McDONALD: I think he said he just has</p> <p>17 some blank pages because it has both sides copied and</p> <p>18 includes some of those missing pages from the other</p> <p>19 one.</p> <p>20 BY MR. McDONALD:</p> <p>21 Q If you could turn to the 12th page of that</p> <p>22 document, Mr. Kinross.</p> <p>23 A Page 12 is just the IBM Technical Viewer general</p> <p>24 information cover.</p> <p>25 Q What's the number in the lower right corner on</p>
<p style="text-align: right;">2176</p> <p style="text-align: center;">KINROSS - DIRECT 2176</p> <p>1 to the seventh page of the document, please?</p> <p>2 A All right. These aren't numbered the same way.</p> <p>3 Q The lower corner --</p> <p>4 A Mine is numbered 230.</p> <p>5 Q Do you have an IBM Technical Viewer/2 Manual?</p> <p>6 A Yeah, it's numbered DX 230 in my book.</p> <p>7 Q Just turn to the seventh page of that document</p> <p>8 where it has the heading features of IBM Technical</p> <p>9 Viewer/2 just down seven pages.</p> <p>10 THE COURT: The even numbered pages are</p> <p>11 missing out of my copy. What are you on? Seven? I</p> <p>12 have seven, but I don't have the even numbered pages.</p> <p>13 MR. McDONALD: This is Exhibit DX 105. You</p> <p>14 say you're missing some pages, Your Honor?</p> <p>15 THE COURT: Mine goes from 3 to 5 to 7 to 9.</p> <p>16 MR. McDONALD: Okay. This is actually the</p> <p>17 document that's filed with the Patent Office. It had</p> <p>18 missing pages from the document. I think there's</p> <p>19 another version of it.</p> <p>20 BY MR. McDONALD:</p> <p>21 Q Exhibit 230 is the complete version. Do you have</p> <p>22 that, Mr. Kinross?</p> <p>23 A Yes.</p> <p>24 Q So let's turn to the page --</p> <p>25 THE COURT: What volume is 230 in?</p>	<p style="text-align: right;">2178</p> <p style="text-align: center;">KINROSS - DIRECT 2178</p> <p>1 page 1 of the document?</p> <p>2 A The lower right, G0000012.</p> <p>3 Q Can you turn to G23, please? Now, if we blow up</p> <p>4 the search capability here, about the third one down.</p> <p>5 A Yes.</p> <p>6 Q This is the 1991 IBM document, right, Mr. Kinross?</p> <p>7 Do you see that in the lower left part of that same</p> <p>8 page?</p> <p>9 A Yes.</p> <p>10 Q So we have now blown up this search function here</p> <p>11 where it talks about "A search facility that can</p> <p>12 locate every occurrence of a word or phrase in either</p> <p>13 the current topic, a list of selected topics, the</p> <p>14 complete document, or another document." Do you see</p> <p>15 that sentence?</p> <p>16 A Yes.</p> <p>17 Q Now, isn't it true that the IBM Technical Viewer/2</p> <p>18 product had that search facility as described there</p> <p>19 before Fisher started working with IBM?</p> <p>20 A I can't say I saw a list of selected topics in the</p> <p>21 Technical Viewer search program that I looked at</p> <p>22 initially.</p> <p>23 Q Were you looking for that ability to search</p> <p>24 selected topics initially?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">2179</p> <p style="text-align: center;">KINROSS - DIRECT 2179</p> <p>1 Q What did you actually see?</p> <p>2 A Well, when you brought Technical Viewer up, it</p> <p>3 would have the content that could be searched. If you</p> <p>4 did a search, it would search that content.</p> <p>5 Q Did it give you a menu of things you could search</p> <p>6 through such as part catalogs or other types of</p> <p>7 documents?</p> <p>8 A No.</p> <p>9 Q Did you ever see a demo of the Volvo parts system?</p> <p>10 A No, I didn't. There are other things in this</p> <p>11 manual that in my opinion did not exist in the product</p> <p>12 as well.</p> <p>13 Q If we go farther down in the same page, do you see</p> <p>14 near the bottom of the page it talks about Windows?</p> <p>15 A Yes, sir.</p> <p>16 Q That's a graphic user interface, correct, as used</p> <p>17 there?</p> <p>18 A Right.</p> <p>19 Q Did the IBM Technical Viewer/2 as you first saw it</p> <p>20 have that Windows graphical user interface?</p> <p>21 A Well, Windows to me is the windows we all know</p> <p>22 from Microsoft which IBM also had as its OS/2 version.</p> <p>23 So a Window would -- my definition of this is just a</p> <p>24 portion of the screen that can be manipulated,</p> <p>25 resized, just like Windows is today.</p>	<p style="text-align: right;">2181</p> <p style="text-align: center;">KINROSS - DIRECT 2181</p> <p>1 THE CLERK: They are going to go downstairs.</p> <p>2 THE COURT: Just leave your notebooks with</p> <p>3 Mr. Neal. He'll watch them for you.</p> <p>4 (The jury is exiting the courtroom.)</p> <p>5 THE COURT: When is Mr. Gounaris due up?</p> <p>6 MR. McDONALD: After Mr. Kinross.</p> <p>7 THE COURT: Be ready to argue this motion</p> <p>8 then when we come back from lunch.</p> <p>9 All right. We'll be in recess for one hour.</p> <p>10 (Luncheon recess taken.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">2180</p> <p style="text-align: center;">KINROSS - DIRECT 2180</p> <p>1 Q You'd consider that a graphical user interface,</p> <p>2 right?</p> <p>3 A Yes.</p> <p>4 Q Isn't true that the TV/2 system could search</p> <p>5 either data on a CD ROM or data saved on the hard</p> <p>6 drive of the TV/2 computer system?</p> <p>7 A Yes.</p> <p>8 Q That was before Fisher started working with IBM</p> <p>9 that the TV/2 had that capability, right?</p> <p>10 A It was just a matter of where the data was placed.</p> <p>11 Q So you're agreeing with me that it had that</p> <p>12 capability?</p> <p>13 A Yes, I'm agreeing with you.</p> <p>14 Q It's IBM that actually programmed the search</p> <p>15 engine capability for TV/2, not anybody from Fisher,</p> <p>16 right?</p> <p>17 A Yes, IBM programmed the search in Technical</p> <p>18 Viewer, right.</p> <p>19 THE COURT: How much longer do you with the</p> <p>20 witness, Mr. McDonald?</p> <p>21 MR. McDONALD: I'd say maybe about a half</p> <p>22 hour, Your Honor.</p> <p>23 THE COURT: I think this is a good place to</p> <p>24 break for lunch.</p> <p>25 They're going out today.</p>	<p style="text-align: right;">2182</p> <p style="text-align: center;">2182</p> <p>1 THE COURT: All right. I'm going to tell you all</p> <p>2 something that lawyers ought to know.</p> <p>3 MR. ROBERTSON: I apologize for interrupting, but</p> <p>4 this witness is involved in the relationship at IBM.</p> <p>5 THE COURT: Excuse me, sir. We have a motion that we</p> <p>6 need to deal with, but he didn't...</p> <p>7</p> <p>8 (Witness out.)</p> <p>9</p> <p>10 THE COURT: The jury wants to know when this case is</p> <p>11 going to be over with. We've got one juror who is working two</p> <p>12 jobs. Do you see why I want you to focus on getting this stuff</p> <p>13 in and streamlined and cut this nonsense out? They don't make</p> <p>14 the money you make, and if you're not careful, you lose people</p> <p>15 after awhile. All of you. Okay.</p> <p>16 Gounaris, is that how you pronounce it?</p> <p>17 MR. SCHULTZ: Yes.</p> <p>18 THE COURT: I got your motion, I got the response.</p> <p>19 Do you want to say anything?</p> <p>20 MR. ROBERTSON: Yes, Your Honor. I'm sure you've</p> <p>21 seen the brief. I'm sure you've seen the overlap with respect</p> <p>22 to the exhibits. There is only one additional exhibit that's</p> <p>23 been identified.</p> <p>24 The argument is made that they have to prove</p> <p>25 invalidity by clear and convincing evidence, but that doesn't</p>

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<p style="text-align: right;">2207</p> <p>Kinross - Direct</p> <p style="text-align: right;">2207</p> <p>1 Q Is it your understanding that's an accurate description of</p> <p>2 the RIMS system as it indicated in '89 that it had that</p> <p>3 feature?</p> <p>4 A Yes.</p> <p>5 Q The second point, realtime pricing and availability, do</p> <p>6 you see that?</p> <p>7 A Yes.</p> <p>8 Q Is it your understanding that the RIMS system, in '89,</p> <p>9 also had that feature?</p> <p>10 A Well, yes, but all of this is just Fisher's system, just</p> <p>11 Fisher.</p> <p>12 Q Okay. And then we already talked about number three;</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q So let's go to number four, product cross-reference. Do</p> <p>16 you see that one?</p> <p>17 A Yes.</p> <p>18 Q Did the RIMS system, as it existed in '89, have that</p> <p>19 product cross-reference feature?</p> <p>20 A It had a way to reference competitors' numbers to Fisher</p> <p>21 numbers, yes.</p> <p>22 Q So that would be a similar or equivalent product? It</p> <p>23 would have a Fisher number and a competitor number; is that</p> <p>24 what you are talking about?</p> <p>25 A Yes.</p>	<p style="text-align: right;">2209</p> <p>Kinross - Direct</p> <p style="text-align: right;">2209</p> <p>1 A No.</p> <p>2 THE COURT: Be careful what you are asking. People</p> <p>3 can get confused, you know.</p> <p>4 Q The RIMS patent refers to a part lookup as a search;</p> <p>5 right.</p> <p>6 A If you say so. I'm not an expert on the RIMS patent. I</p> <p>7 never read it in its entirety, so I think --</p> <p>8 THE COURT: You don't know; is that your answer?</p> <p>9 THE WITNESS: I think in my deposition we did read</p> <p>10 portions of it, Mr. McDonald.</p> <p>11 THE COURT: Is that where you saw it?</p> <p>12 THE WITNESS: Yes.</p> <p>13 THE COURT: Let's go.</p> <p>14 Q Scroll down on this page. In 1993 now, is this the entry</p> <p>15 that really relates to the patents involved in this lawsuit?</p> <p>16 A Yes.</p> <p>17 Q Develop TV/2 interface; right?</p> <p>18 A Correct.</p> <p>19 Q It says, features, two things: One, multiple catalogs</p> <p>20 searched; two, integration with requisition, right?</p> <p>21 A Yes.</p> <p>22 Q That's really what the invention in this case is about;</p> <p>23 right?</p> <p>24 MR. ROBERTSON: Objection. Invention in the case is</p> <p>25 what the claims are that are asserted here, not some general</p>
<p style="text-align: right;">2208</p> <p>Kinross - Direct</p> <p style="text-align: right;">2208</p> <p>1 Q Then there's another bullet point about all based on</p> <p>2 knowing the part number and entering it into the system for</p> <p>3 verification, i.e., no search capability; do you see that?</p> <p>4 A Yes.</p> <p>5 Q Now, it is true that in the RIMS system in '89, it could</p> <p>6 search via part number; right?</p> <p>7 A If you want to characterize that as a search. We think</p> <p>8 that's a part lookup. It's a full key lookup, so if you have</p> <p>9 to identify the part number, you needed to know the entire part</p> <p>10 number key.</p> <p>11 Q But is it true that in the RIMS patent itself, it does</p> <p>12 refer to looking up a part number as a search?</p> <p>13 A I don't know. It probably does if you have that</p> <p>14 information, but the definition of searching changed over time.</p> <p>15 You search a database by giving it a key. That's where that --</p> <p>16 that's where that terminology came from.</p> <p>17 Q So, I'm not sure now. Are you agreeing or disagreeing</p> <p>18 that the RIMS system patent application that's incorporated</p> <p>19 into the patents involved in this lawsuit actually refers to a</p> <p>20 part number search or part number lookup as a search?</p> <p>21 A I think the RIMS patent does refer to a part number lookup</p> <p>22 as a search.</p> <p>23 THE COURT: He didn't ask you about the patent. He</p> <p>24 asked you about the patent application. Do you know what was</p> <p>25 in the patent application?</p>	<p style="text-align: right;">2210</p> <p>Kinross - Direct</p> <p style="text-align: right;">2210</p> <p>1 idea of what the invention is.</p> <p>2 THE COURT: Sustained.</p> <p>3 Q Mr. Kinross, would you agree that with the development of</p> <p>4 the TV/2 interface, the features added to the RIMS system were,</p> <p>5 one, ability to search multiple catalogs, and two, integrating</p> <p>6 that searching with the requisition system?</p> <p>7 A I think it was more than that.</p> <p>8 Q Would you agree that it includes those two things?</p> <p>9 A Yes, I would agree.</p> <p>10 Q Would you agree those are the only two things you listed</p> <p>11 here on the timeline as features of that TV/2 interface</p> <p>12 development in 1993?</p> <p>13 A Yes.</p> <p>14 Q And then in 1994, there's a reference on this timeline to</p> <p>15 the graphical end user interface for requisitioning; right?</p> <p>16 A Yes.</p> <p>17 Q The TV/2 system we already talked about, that had its own</p> <p>18 graphic user interface; right?</p> <p>19 A Yes.</p> <p>20 Q The RIMS did not have it yet, is that right, as of 1994?</p> <p>21 A 1994 is when we developed it. We recognized the</p> <p>22 requirement for it early on, and 1994 was the year that we</p> <p>23 developed it.</p> <p>24 Q Now, there aren't any graphical user interfaces actually</p> <p>25 shown in the patents-in-suit, are there?</p>

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<p style="text-align: right;">2243</p> <p>Gounaris - Direct 2243</p> <p>1 demonstration, and comprehensive.</p> <p>2 THE COURT: Right, but he's not going through those.</p> <p>3 He's going through what preceded those, as I understand it.</p> <p>4 MR. SCHULTZ: That's exactly correct, Your Honor.</p> <p>5 THE COURT: Objection is overruled.</p> <p>6</p> <p>7 (End of sidebar discussion.)</p> <p>8</p> <p>9 THE COURT: All right. Go ahead.</p> <p>10 Q Mr. Gounaris, you were talking about a demonstration</p> <p>11 system. What was the demonstration system that you saw?</p> <p>12 A It was a type of mockup --</p> <p>13 MR. ROBERTSON: Can we have a time frame, Your Honor?</p> <p>14 THE COURT: Summer 1993; right?</p> <p>15 THE WITNESS: Yes. It was a mockup. It was the way</p> <p>16 to be able to show the business executives what this might look</p> <p>17 like as it was being developed. It was just to take something</p> <p>18 that conceptual and give it a physical look and feel.</p> <p>19 THE COURT: What is a mockup?</p> <p>20 THE WITNESS: Mockup is kind of a -- it was some</p> <p>21 samples of different screens and how they would interact with</p> <p>22 one another so you get a sense of how a user might sit down in</p> <p>23 front of the electronic catalog and use it, but it wasn't a</p> <p>24 fully developed system. It was just very limited function.</p> <p>25 THE COURT: Mr. Schultz, remember what you are</p>	<p style="text-align: right;">2245</p> <p>Gounaris - Direct 2245</p> <p>1 please, and go to page 12 of that document.</p> <p>2 A Page 12 of this same document?</p> <p>3 THE COURT: Why don't we try it this way: I can</p> <p>4 strike it if I need to and tell him to disregard it.</p> <p>5 What did you see in operation? He's described a</p> <p>6 mockup and a mockup with some screens. That's what he said so</p> <p>7 far. What did you see in the summer of '92 that was this</p> <p>8 demonstration other than those two screens? Anything else?</p> <p>9 THE WITNESS: We demonstrated for Frank and for a few</p> <p>10 executives from Fisher what the system would look like, so</p> <p>11 there were pictures, there were simulations of what was in the</p> <p>12 catalogs, so it gave you the look and feel of the catalog.</p> <p>13 THE COURT: So you saw simulations of something that</p> <p>14 was in a catalog, saw pictures, and you saw mockups on the</p> <p>15 screen.</p> <p>16 THE WITNESS: Text, pictures. It looked similar to</p> <p>17 what the physical catalog looked like only on an electronic</p> <p>18 form, so you would get a sense of what an electronic version of</p> <p>19 a paper catalog would look like and how somebody might go</p> <p>20 through an order process. It was very simple and limited in</p> <p>21 terms of its capability but gave them a feel for here's what</p> <p>22 this system would be like.</p> <p>23 THE COURT: Now, Mr. Schultz, that doesn't sound to</p> <p>24 me like what he saw was the TV/2 in operation. What he saw was</p> <p>25 a mockup of the TV/2 in operation using some fairly basic</p>
<p style="text-align: right;">2244</p> <p>Gounaris - Direct 2244</p> <p>1 talking about. You ask him whether he saw the TV/2 operate.</p> <p>2 He said, yeah. When? Summer of '93. What was it? This demo,</p> <p>3 and he just said in response to that what? It wasn't fully</p> <p>4 developed. So he didn't see the TV/2 operate. So now I</p> <p>5 want -- you know, that's why I ask you all to be careful about</p> <p>6 what you are doing. Okay.</p> <p>7 Q When you say it wasn't fully developed, were you talking</p> <p>8 about the TV/2 plus RIMS system?</p> <p>9 MR. ROBERTSON: Objection, leading.</p> <p>10 A No, I was --</p> <p>11 THE COURT: What were you talking about, is the</p> <p>12 proper question, that wasn't fully developed.</p> <p>13 A I was talking about the entire system wasn't fully</p> <p>14 developed. It was just a small subset of the electronic</p> <p>15 catalog system just to give it a mockup.</p> <p>16 Q I want you to focus just on TV/2. Was the TV/2 system in</p> <p>17 operation when you saw the demonstration in the summer of 1993?</p> <p>18 MR. ROBERTSON: Let me object as vague and ambiguous</p> <p>19 as the TV/2 system. This is part of a project here, and went</p> <p>20 through several --</p> <p>21 THE COURT: I'm going to sustain it. You need more</p> <p>22 specificity of his testimony. Otherwise, I wouldn't do that.</p> <p>23 We've got something that we don't know what it is, and we need</p> <p>24 to get it defined properly. So either do it or move on.</p> <p>25 Q Mr. Gounaris, if we could bring up Exhibit 230 again,</p>	<p style="text-align: right;">2246</p> <p>Gounaris - Direct 2246</p> <p>1 tools. Isn't that where we are, and if that's right, then Mr.</p> <p>2 Robertson's objection I should have sustained.</p> <p>3 MR. SCHULTZ: Mr. Gounaris --</p> <p>4 THE COURT: That's where we are.</p> <p>5 MR. ROBERTSON: I would move to strike the question</p> <p>6 and answer, Your Honor.</p> <p>7 THE COURT: I think that's right. We've tried and</p> <p>8 tried and tried, and it isn't there, so I sustain his</p> <p>9 objection. Just disregard the testimony about this preliminary</p> <p>10 demonstration, ladies and gentlemen. It's not pertinent to the</p> <p>11 case.</p> <p>12 Q Mr. Gounaris, if you'd take a look at Exhibit 230. I'd</p> <p>13 like you to refer to the Bates number at the bottom, G0000023.</p> <p>14 A Okay.</p> <p>15 Q Did the TV/2 system, as of 1993, have the functionality</p> <p>16 described on this page?</p> <p>17 MR. ROBERTSON: I object, Your Honor. Ms. Eng</p> <p>18 testified at length about this page, so this is cumulative.</p> <p>19 MR. McDONALD: I'm talking about 1993, and Mr.</p> <p>20 Gounaris is in a specific role with respect to --</p> <p>21 THE COURT: What difference does that make if Ms.</p> <p>22 Eng's testified to it?</p> <p>23 MR. SCHULTZ: Because Mr. Gounaris is the person</p> <p>24 actually providing the information --</p> <p>25 THE COURT: The better answer is, Ms. Eng wasn't</p>

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<p>2272</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ----- 5 ePLUS, INC., : 6 : 7 Plaintiff, : 8 v. : Civil Action 9 : No. 3:09CV620 10 LAWSON SOFTWARE, INC., : 11 : January 19, 2011 12 Defendant. : 13 ----- 14 COMPLETE TRANSCRIPT OF JURY TRIAL 15 BEFORE THE HONORABLE ROBERT E. PAYNE 16 UNITED STATES DISTRICT JUDGE, AND A JURY 17 18 APPEARANCES: 19 Scott L. Robertson, Esq. 20 Jennifer A. Albert, Esq. 21 Michael T. Strapp, Esq. 22 GOODWIN PROCTOR 23 901 New York Avenue, NW 24 Washington, D.C. 20001 25 26 Craig T. Merritt, Esq. 27 CHRISTIAN & BARTON 28 909 E. Main Street, Suite 1200 29 Richmond, VA 23219-3095 30 31 Counsel for the plaintiff ePlus 32 33 DIANE J. DAFFRON, RPR 34 OFFICIAL COURT REPORTER 35 UNITED STATES DISTRICT COURT</p>	<p>2274</p> <p>1 (The proceedings in this matter commenced at 2 9:00 a.m.) 3 THE CLERK: Civil Action No. 3:09CV00620. 4 EPlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer A. Albert, and Mr. Michael T. Strapp 7 represent the plaintiff. Mr. Daniel W. McDaniel, 8 Mr. Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, 9 Mr. William D. Schultz, and Ms. Rachel C. Hughey 10 represent the defendant. 11 Are counsel ready to proceed? 12 MR. ROBERTSON: The plaintiff is, Your Honor. 13 MR. McDONALD: Yes, Your Honor, we are. 14 THE COURT: Good morning, ladies and 15 gentlemen. We're going to resume the Laurene McEnery 16 show, which appears at this hour only once. It's 17 under the sponsorship of Lawson Software, Inc. through 18 the cooperation of the plaintiff. And then we're 19 going to have some testimony. 20 I may, I'm told, have to deal with a motion 21 after this. So I don't know. We may have to take a 22 recess, but we'll see what we're doing. 23 I think what the lawyers have been doing is 24 trying to work out ways to continually, as they have 25 gone on, make the trial more efficient and reduce the</p>
<p>2273</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 Rachel C. Hughey, Esq. 6 MERCHANT & GOULD 7 3200 IDS Center 8 80 South Eighth Street 9 Minneapolis, MN 55402-2215 10 11 Dabney J. Carr, IV, Esq. 12 TROUTMAN SANDERS 13 Troutman Sanders Building 14 1001 Haxall Point 15 P.O. Box 1122 16 Richmond, VA 23218-1122 17 18 Counsel for the defendant Lawson Software. 19 20 21 22 23 24 25</p>	<p>2275</p> <p>1 amount of time, your time, that has to be consumed in 2 the process. That takes a lot of hard work, and 3 sometimes there's, as you can imagine, friction that 4 develops in the decisional process that has to be 5 resolved by yours truly. And it's better if we don't 6 expose you to all that because, I have to tell you, it 7 sometimes confuses me, and you don't need to be 8 visited with all that. So we'll see. 9 All right. Are you ready to play. 10 MS. HUGHEY: Yes, Your Honor. 11 THE COURT: All right. All systems go. 12 MS. HUGHEY: Yes. 13 THE COURT: All right. 14 (The video of Laurene McEnery is resumed 15 playing at this time.) 16 THE COURT: Is it through? 17 MS. HUGHEY: Yes, Your Honor. We'd like to 18 submit Exhibit 403, which is the testimony of 19 Ms. McEnery, into evidence. 20 THE COURT: Into evidence, 403? 21 MS. HUGHEY: Yes. 22 THE COURT: All right. It's been admitted. 23 All right. 24 (Defendant's Exhibit 403 is admitted into 25 evidence.)</p>

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<p style="text-align: right;">2424</p> <p>1 Q How is it that you know the TV/2 was available in 1991,</p> <p>2 Dr. Shamos?</p> <p>3 A I used to work with IBM. I'm familiar with IBM policies.</p> <p>4 MR. ROBERTSON: That's not in his expert report, Your</p> <p>5 Honor.</p> <p>6 MR. McDONALD: I didn't need to ask this question.</p> <p>7 He's the one that asked for the foundation.</p> <p>8 THE COURT: It's part of his testimony. It's</p> <p>9 supposed to be in his report if that's the basis of how he knew</p> <p>10 it was on sale. It's supposed to be in his report. Strike</p> <p>11 that testimony, ladies and gentlemen.</p> <p>12 Q With respect to what you referred to to prepare your</p> <p>13 report and what's in your report, Dr. Shamos, can you zero in</p> <p>14 on those materials and tell us whether or not there's anything</p> <p>15 in those materials that gave you a reason to understand that</p> <p>16 the TV/2 materials were available in 1991?</p> <p>17 A Yes. The materials are dated 1991, and they make</p> <p>18 reference to TV/2 in the present tense. Technical Viewer/2 is</p> <p>19 an electronic documentation program.</p> <p>20 MR. ROBERTSON: Objection, Your Honor. You can't</p> <p>21 draw that inference simply because it makes reference to it in</p> <p>22 the present tense in the marketplace in 1991.</p> <p>23 MR. McDONALD: I think Mr. Robertson is practicing</p> <p>24 his closing argument at this time. I don't think that's an</p> <p>25 objection.</p>	<p style="text-align: right;">2426</p> <p>1 what you wanted to convey with that one.</p> <p>2 A Yes. TV/2 taught expressly combining a multi catalog</p> <p>3 search system, namely TV/2, with parts ordering and inventory</p> <p>4 management system.</p> <p>5 Q And what is your last -- can you explain your last point</p> <p>6 on this particular slide, please?</p> <p>7 A Yes. The conclusion there is that the applicants in this</p> <p>8 case didn't invent multi catalog searching.</p> <p>9 Q Did you put together a slide regarding the combination of</p> <p>10 RIMS and TV/2?</p> <p>11 A Yes.</p> <p>12 Q Can we turn to slide 22, please. Is this at least one of</p> <p>13 the slides you prepared regarding combining the RIMS and TV/2</p> <p>14 systems, Dr. Shamos?</p> <p>15 A Well, it's one of them.</p> <p>16 Q Okay. Why don't you go ahead and walk us through this</p> <p>17 particular slide point by point, and, again, pause between each</p> <p>18 bullet here so we have time to follow up with any questions.</p> <p>19 A Okay. Well, RIMS was an inventory management and parts</p> <p>20 ordering system as described in the '989 patent.</p> <p>21 Q Go on to the next one.</p> <p>22 A TV/2 was a multiple catalog searching system as described</p> <p>23 in the IBM TV/2 literature.</p> <p>24 Q Okay. What is your third point?</p> <p>25 A RIMS had -- well, RIMS had all the elements of the</p>
<p style="text-align: right;">2425</p> <p>1 THE COURT: Wait a minute.</p> <p>2 MR. ROBERTSON: There's no foundation, Your Honor,</p> <p>3 just from reading a date on a document that was on sale or in</p> <p>4 public use.</p> <p>5 THE COURT: Well, I think it is inferable from the</p> <p>6 testimony for the jury to make, and you can argue whether it's</p> <p>7 significant or not. Overruled.</p> <p>8 MR. McDONALD: I think we already got an answer to</p> <p>9 the question.</p> <p>10 THE COURT: He did.</p> <p>11 Q Why don't you go on to the next bullet point, Dr. Shamos,</p> <p>12 and explain to us what you're trying to convey with that one.</p> <p>13 A Yes. The TV/2 system, well, fundamentally, its purpose</p> <p>14 was to combine some fairly new technologies at the time,</p> <p>15 including data on CD-ROMs, and to create a generalized</p> <p>16 searching program that allowed you to search by keyword or</p> <p>17 topic through catalogs that were embodied in CD-ROMs, and the</p> <p>18 catalogs could also be stored on hard disk.</p> <p>19 Q What's hard disk?</p> <p>20 A Hard disk is -- the easiest way to understand is the</p> <p>21 permanent disk that's installed in your computer like your PC</p> <p>22 or laptop that retains information even when the machine is</p> <p>23 turned off. But it normally is not separately removable from</p> <p>24 the machine the way a CD would be.</p> <p>25 Q Why don't you move to your third bullet point and explain</p>	<p style="text-align: right;">2427</p> <p>1 asserted claims except maybe those involving two or more</p> <p>2 catalogs or equivalent phrases that are used in the patent such</p> <p>3 as collection of catalogs, but since TV/2 had that, the</p> <p>4 combination of RIMS plus TV/2 had all the elements of the</p> <p>5 asserted claims, and, therefore, would render them obvious.</p> <p>6 Q Is that under how you applied the Court's construction of</p> <p>7 catalogs in this case?</p> <p>8 A Yes.</p> <p>9 Q Did you use the same approach when you looked at the</p> <p>10 application of the Court's construction of catalogs for</p> <p>11 purposes of evaluating infringement as you did for purposes of</p> <p>12 invalidity?</p> <p>13 A Yes. I think that everybody in the case tried to apply</p> <p>14 the Court's construction. I think the parties have different</p> <p>15 ideas about how the Court's construction applies to these</p> <p>16 systems.</p> <p>17 MR. ROBERTSON: Objection, Your Honor. I don't know</p> <p>18 how this witness knows what my idea or ePlus's idea is about</p> <p>19 the Court's construction.</p> <p>20 THE COURT: I think that's -- that question has been</p> <p>21 answered. Let's go ahead.</p> <p>22 Q What are you trying to convey about the last bullet point</p> <p>23 on this slide, Dr. Shamos?</p> <p>24 A Fundamentally that because of the principle that the claim</p> <p>25 terms must be construed the same way for infringement and for</p>

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<p style="text-align: right;">2504</p> <p>1 A Yes, DX-117.</p> <p>2 Q Did you look at whether or not the J-CON system also was</p> <p>3 in existence before the patents-in-suit were filed that met any</p> <p>4 of the needs in the marketplace at that time?</p> <p>5 A Yes.</p> <p>6 Q What was your conclusion about the J-CON system?</p> <p>7 A That the J-CON system met numerous of the allegedly unmet</p> <p>8 needs. In fact, apparently, all of them.</p> <p>9 Q Did you look at any particular J-CON documents as part of</p> <p>10 your analysis of the J-CON system?</p> <p>11 A Yes. There was a huge J-CON manual, I think called volume</p> <p>12 one. It was over a thousand pages long.</p> <p>13 Q Can we put up the first page of Defendant's Exhibit 96,</p> <p>14 please.</p> <p>15 A That's it.</p> <p>16 Q That's page one of that thing; is that right, Dr. Shamos?</p> <p>17 A Yes.</p> <p>18 Q What did you determine from reviewing the J-CON manual</p> <p>19 about the features of that system that would be relevant to</p> <p>20 whether or not that system met the market needs that were in</p> <p>21 existence back in the early '90s?</p> <p>22 MR. ROBERTSON: Your Honor, I'm going to object. It</p> <p>23 calls for a narrative. That's a pretty wide-open question</p> <p>24 there.</p> <p>25 THE COURT: Do you want him to lead?</p>	<p style="text-align: right;">2506</p> <p>1 Q Can you walk us through this and tell us what features you</p> <p>2 saw when you looked at Defendant's Exhibit 96 about the J-CON</p> <p>3 system?</p> <p>4 A J-CON maintained multiple catalogs, allowed you to do</p> <p>5 product searches among the multiple catalogs. It enabled you</p> <p>6 to create requisitions from the hit results that you got from</p> <p>7 the catalogs. You could then generate multiple purchase orders</p> <p>8 from a single requisition. You could do inventory checking and</p> <p>9 also cross-referencing. You could convert a catalog number</p> <p>10 from one vendor to that of another vendor.</p> <p>11 Q Thank you. Can we go back to the PO Writer issue. Well,</p> <p>12 actually, let's do this: Let's go back to slide number 90. I</p> <p>13 want to make sure we have something clear here.</p> <p>14 You mentioned that the, something about the structure in</p> <p>15 these claims, claim elements corresponded to the structure in</p> <p>16 the corresponding elements of claim three of the '683 patent.</p> <p>17 I want to be clear, though. Was the function the same in these</p> <p>18 two elements as it was in the '683 patent or not?</p> <p>19 A I thought that there was an agreement that the means were</p> <p>20 to be treated identically. There may have been slight</p> <p>21 differences in the wording of the function. I don't recall.</p> <p>22 Q Well, did you look at the Court's construction of the</p> <p>23 function of those two means elements of claim one of the '172</p> <p>24 patent?</p> <p>25 A Oh, yes. But for the purposes of testifying here today,</p>
<p style="text-align: right;">2505</p> <p>1 MR. ROBERTSON: Well, I'd like him to ask --</p> <p>2 THE WITNESS: I'm not going to give a narrative.</p> <p>3 I'll answer in one sentence.</p> <p>4 THE COURT: I think you already did. You said it met</p> <p>5 all the --</p> <p>6 THE WITNESS: Correct.</p> <p>7 THE COURT: I think the question was what were the</p> <p>8 unfelt needs, though. Is that right?</p> <p>9 MR. McDONALD: Yes.</p> <p>10 THE COURT: It met all the unfelt needs, but what</p> <p>11 were the unfelt needs that you think it met -- met. Oh,</p> <p>12 goodness, too late in the day -- and the J-CON that is.</p> <p>13 THE WITNESS: Yes.</p> <p>14 THE COURT: Identify very briefly the needs.</p> <p>15 Q Did you do a slide about that, about the J-CON system?</p> <p>16 A Yes.</p> <p>17 Q Let's go to slide 14. Is this a summary of what you</p> <p>18 viewed as relevant to features of the J-CON system that would</p> <p>19 be relevant to the marketplace needs back in the early '90s?</p> <p>20 A Okay. Wait. The answer is yes, and those are some of the</p> <p>21 features of J-CON. But with respect to the unmet needs that</p> <p>22 were alleged by ePlus, those were in their interrogatory</p> <p>23 responses, and I can just go down and list the needs that they</p> <p>24 believed were unmet, and I can show that they were met by</p> <p>25 J-CON.</p>	<p style="text-align: right;">2507</p> <p>1 there's no substantial difference.</p> <p>2 Q If we can turn to slide number 147. Dr. Shamos, can you</p> <p>3 tell us what you wanted to convey here with your slide number</p> <p>4 147?</p> <p>5 A Yes. There's a dispute in this case as to whether the</p> <p>6 Lawson system has catalogs at all, or if it does have catalogs,</p> <p>7 whether it has more than one catalog, and the plaintiff has</p> <p>8 asserted for purposes of infringement --</p> <p>9 MR. ROBERTSON: Objection, Your Honor,</p> <p>10 characterization of what the plaintiff has asserted here.</p> <p>11 MR. McDONALD: Why don't you stick -- I'll try to</p> <p>12 keep a shorter leash here, Your Honor.</p> <p>13 Q Dr. Shamos, can you walk through your analysis here in</p> <p>14 slide 147, one bullet point at a time and try to stay on those</p> <p>15 particular bullet points, please?</p> <p>16 A Sure. Well, you already know from my previous two hours</p> <p>17 of testimony that all of certain claims are obvious in light of</p> <p>18 RIMS plus TV/2.</p> <p>19 Q Okay. Take us to the next element?</p> <p>20 A The only claim elements missing from RIMS, or even</p> <p>21 allegedly missing from RIMS, are at least two catalogs, a</p> <p>22 collection of catalogs, et cetera.</p> <p>23 MR. ROBERTSON: Objection, Your Honor. I don't know</p> <p>24 who he's characterizing as alleging is missing from RIMS,</p> <p>25 because if he's alleging it's ePlus, that's not an accurate</p>

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<p style="text-align: right;">2520</p> <p style="text-align: center;">2520</p> <p>1 of this re-examination, you'd have to have it in context and</p> <p>2 have it have some meaning.</p> <p>3 I still think on balance it has no relevance</p> <p>4 whatsoever to the willfulness issue, and we briefed that</p> <p>5 earlier, and Your Honor, in its ruling, indicated it wasn't</p> <p>6 relevant even to willfulness. So that is a variable that</p> <p>7 could --</p> <p>8 THE COURT: Which opinion was that?</p> <p>9 MR. ROBERTSON: One of your motions in limine.</p> <p>10 THE COURT: Is it verbal --</p> <p>11 MR. ROBERTSON: No, it was a written order.</p> <p>12 THE COURT: Then you need to tell me by docket number</p> <p>13 what it is at some point. So anyway, you want to put on --</p> <p>14 what are you going to put on on willfulness, Mr. Robertson?</p> <p>15 What witnesses are you going to put on?</p> <p>16 MR. McDONALD: I would call Mr. Farber on</p> <p>17 re-examination, perhaps Mr. Manbec, and I would probably</p> <p>18 cross-examine a Lawson witness or two, but that would likely be</p> <p>19 it. But, Your Honor, I would like to be able to consult with</p> <p>20 my colleagues this evening and come back.</p> <p>21 THE COURT: I understand, but, you know, it's good to</p> <p>22 get some idea so I can be thinking, too. How about you? What</p> <p>23 do you see the number of witnesses being for you, Mr. McDonald?</p> <p>24 MR. McDONALD: I think it would be some witness to</p> <p>25 get into re-examination. I think that would be Dr. Shamos.</p>	<p style="text-align: right;">2522</p> <p style="text-align: center;">2522</p> <p>1 hearing that we might have, there are these issues of</p> <p>2 patentability and indefiniteness that I just brought to your</p> <p>3 attention.</p> <p>4 I think as pure issues of laws, there is no real</p> <p>5 facts in dispute. Whether it's patentable or not, you have to</p> <p>6 focus on the claim and the specifics. Those are not in</p> <p>7 dispute. With respect to the indefiniteness, you have to focus</p> <p>8 on the claim and the specifics. Those are not in dispute.</p> <p>9 THE COURT: You take the view that patentability and</p> <p>10 indefiniteness are legal -- you take the view that</p> <p>11 patentability and indefiniteness are legal questions, that no</p> <p>12 fact issues need to be considered as respects those; is that</p> <p>13 right?</p> <p>14 MR. ROBERTSON: I think the parties are in agreement</p> <p>15 on that.</p> <p>16 THE COURT: Are you in agreement?</p> <p>17 MR. McDONALD: I believe there aren't any disputed</p> <p>18 facts, Your Honor. I think there are factual underpinnings to</p> <p>19 those determinations, but I don't think the actual facts are in</p> <p>20 dispute.</p> <p>21 THE COURT: There are no papers filed at this time,</p> <p>22 are there?</p> <p>23 MR. McDONALD: No.</p> <p>24 THE COURT: Has the Federal Circuit decided a case</p> <p>25 since Bilski?</p>
<p style="text-align: right;">2521</p> <p style="text-align: center;">2521</p> <p>1 That was covered in his report, and Mr. Lipscomb was our</p> <p>2 rebuttal to Mr. Manbec.</p> <p>3 I'm not sure that the Court's exclusion, though, was</p> <p>4 dependent on this issue. I think it was independent of any</p> <p>5 issues here. I think they are both out, as I understand it.</p> <p>6 THE COURT: What is his name?</p> <p>7 MR. McDONALD: Ernest Lipscomb, L-i-p-s-c-o-m-b. I</p> <p>8 believe I got that right.</p> <p>9 THE COURT: I have to tell you, I don't remember</p> <p>10 exactly how I handled the re-examination issue, and since the</p> <p>11 time that I handled it, you all have agreed willfulness will be</p> <p>12 tried by the Court, and that may, in fact, affect what evidence</p> <p>13 can come in.</p> <p>14 Depending upon -- my recollection is I considered the</p> <p>15 willful -- the re-examination to be of marginal relevance to</p> <p>16 the issues here except willfulness and that 403 kept it all out</p> <p>17 because it would be very hard for the jury to segregate all</p> <p>18 that out, and after that, you all agreed to have the case tried</p> <p>19 to the Court, the willfulness case tried to the Court. So I</p> <p>20 don't know exactly where we stand, but that's sort of where my</p> <p>21 general recollection is.</p> <p>22 MR. ROBERTSON: Your Honor, the willfulness issues</p> <p>23 was fully briefed in the context of re-examinations, and I've</p> <p>24 been handed, I believe it's Document 375 was Your Honor's order</p> <p>25 on July 26th of 2010. While you are talking about this perhaps</p>	<p style="text-align: right;">2523</p> <p style="text-align: center;">2523</p> <p>1 MR. ROBERTSON: Your Honor --</p> <p>2 THE COURT: I know there were some cases that were</p> <p>3 sort of put on hold up there, I thought, waiting for Bilski,</p> <p>4 but I don't know whether they've been decided or whether they</p> <p>5 just sent them back in view of Bilski or what happened.</p> <p>6 MR. ROBERTSON: I don't know the answer to that</p> <p>7 question, Your Honor. I don't know if -- I follow them fairly</p> <p>8 closely, and I haven't seen anything come out. I maybe defer</p> <p>9 to Mr. McDonald.</p> <p>10 THE COURT: You all are going to have to brief those</p> <p>11 issues.</p> <p>12 MR. ROBERTSON: We can do that, Your Honor.</p> <p>13 THE COURT: You might sit down and decide on a</p> <p>14 briefing schedule, 10:00 a.m., 5:00 p.m., 9:00 a.m., those</p> <p>15 kinds of scheduled.</p> <p>16 MR. ROBERTSON: Your Honor, one other issue I do want</p> <p>17 to raise. Mr. -- I had Dr. Weaver here to call in rebuttal on</p> <p>18 some of these issues that don't have to deal with prior art,</p> <p>19 these anticipation and obviousness. He did have to -- he was</p> <p>20 going to address written description which is another section</p> <p>21 112 issue.</p> <p>22 That is a fact question as we all have identified in</p> <p>23 the pretrial order. I just want to make -- Mr. McDonald</p> <p>24 represented to me that he was not going to be asking Dr. Shamos</p> <p>25 any questions with respect to written description. I think it</p>

<p style="text-align: right;">2532</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ----- 5 ePLUS, INC., : 6 : 7 Plaintiff, : 8 v. : Civil Action 9 : No. 3:09CV620 10 LAWSON SOFTWARE, INC., : 11 : January 20, 2011 12 Defendant. : 13 ----- 14 COMPLETE TRANSCRIPT OF JURY TRIAL 15 BEFORE THE HONORABLE ROBERT E. PAYNE 16 UNITED STATES DISTRICT JUDGE, AND A JURY 17 18 APPEARANCES: 19 Scott L. Robertson, Esq. 20 Jennifer A. Albert, Esq. 21 Michael T. Strapp, Esq. 22 GOODWIN PROCTOR 23 901 New York Avenue, NW 24 Washington, D.C. 20001 25 26 Craig T. Merritt, Esq. 27 CHRISTIAN & BARTON 28 909 E. Main Street, Suite 1200 29 Richmond, VA 23219-3095 30 31 Counsel for the plaintiff ePlus 32 33 DIANE J. DAFFRON, RPR 34 OFFICIAL COURT REPORTER 35 UNITED STATES DISTRICT COURT</p>	<p style="text-align: right;">2534</p> <p>1 (The proceedings in this matter commenced at 2 9:15 a.m.) 3 (The jury is not present.) 4 THE CLERK: Civil Action No. 3:09CV00620, 5 ePlus, Incorporated v. Lawson Software, Incorporated. 6 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 7 Ms. Jennifer A. Albert, and Mr. Michael G. Strapp 8 represent the plaintiff. Mr. Daniel W. McDaniel, 9 Mr. Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, 10 Mr. William D. Schultz, and Ms. Rachel C. Hughey 11 represent the defendant. 12 Are counsel ready to proceed? 13 MR. ROBERTSON: Yes, Your Honor. 14 MR. McDONALD: Yes, Your Honor. 15 THE COURT: What do you need to see me about? 16 MR. McDONALD: I think we worked out all the 17 issues on the Hilliard slides. I think the only thing 18 that was outstanding was these jury questions. 19 MR. ROBERTSON: There is also -- 20 THE COURT: I don't need the jury questions, 21 to deal with them now. 22 MR. ROBERTSON: All right. 23 THE COURT: Oh, the questions raised by the 24 jury. Oh, yes. What do you want to do about the 25 questions? Where is that thing that was submitted</p>
<p style="text-align: right;">2533</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 Rachel C. Hughey, Esq. 6 MERCHANT & GOULD 7 3200 IDS Center 8 80 South Eighth Street 9 Minneapolis, MN 55402-2215 10 11 Dabney J. Carr, IV, Esq. 12 TROUTMAN SANDERS 13 Troutman Sanders Building 14 1001 Haxall Point 15 P.O. Box 1122 16 Richmond, VA 23218-1122 17 18 Counsel for the defendant Lawson Software. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2535</p> <p>1 yesterday? Court Exhibit 4. 2 Are P.O. Writer and J-CON patented, if so, 3 when? Didn't Dr. Staats say that it was within a 4 year? 5 Basically, what he said is for them to 6 remember. So was the J-CON system only used for 7 automotive purposes and couldn't be used, all that big 8 long text is something he testified to or didn't, and 9 they'll have to remember that testimony. And you-all 10 will address it in argument; is that right? 11 MR. McDONALD: I think that's fair, Your 12 Honor. 13 MR. ROBERTSON: Your Honor, I think the real 14 response, what I would suggest, Your Honor, is that 15 just you need not concern yourself with it. Whether 16 the J-CON system addressed auto parts or medical 17 systems, the J-CON system is not prior art in this 18 case, and that's why they don't need to consider it. 19 Dr. Shamos didn't over any opinions with respect to it 20 and I think this is just ripe for confusion if we say 21 it had some significance. 22 The same thing with were P.O. Writer and 23 J-CON patented. That's evidence of some confusion on 24 the part of the jury. First of all, they need not 25 concern themselves with whether J-CON or P.O. Writer</p>

<p>2544</p> <p>1 you offer it in this courtroom?</p> <p>2 MR. McDONALD: Objection, Your Honor, asked</p> <p>3 and answered.</p> <p>4 THE COURT: Sustained.</p> <p>5 Q Did you --</p> <p>6 THE COURT: It doesn't make any difference</p> <p>7 what he's testified to elsewhere, ladies and</p> <p>8 gentlemen. It's only what is testified to here that</p> <p>9 is important.</p> <p>10 MR. ROBERTSON: Thank you, Your Honor.</p> <p>11 BY MR. ROBERTSON:</p> <p>12 Q You offered zero opinions that J-CON anticipated</p> <p>13 any of the 12 claims at issue in this case here,</p> <p>14 correct?</p> <p>15 A In this room.</p> <p>16 Q You offered zero opinions that J-CON in</p> <p>17 combination with any other prior art reference</p> <p>18 invalidates the claims in this courtroom, right?</p> <p>19 A Right.</p> <p>20 Q You are the only Lawson expert testifying on</p> <p>21 invalidity opinions, right?</p> <p>22 A I believe so.</p> <p>23 Q You don't know of any other Lawson expert on</p> <p>24 invalidity, do you?</p> <p>25 A No.</p>	<p>2546</p> <p>1 Exhibit 96. This is what, I think, was represented by</p> <p>2 Mr. McDonald that had thousands of pages. I'll accept</p> <p>3 that representation. This is the only page of</p> <p>4 Defendant's Exhibit 96 that you showed to the jury;</p> <p>5 isn't that right?</p> <p>6 A Yes.</p> <p>7 Q You didn't discuss a single substantive page in</p> <p>8 this manual that contains thousands of pages, right?</p> <p>9 A I think I testified that it had over a thousand</p> <p>10 pages, not thousands. No, that's the only page that</p> <p>11 was shown.</p> <p>12 Q With respect to P.O. Writer that was discussed,</p> <p>13 similarly you offered zero opinions that P.O. Writer</p> <p>14 rendered obvious any claim at issue here, correct?</p> <p>15 A In this courtroom.</p> <p>16 Q And you offered zero opinions that P.O. Writer</p> <p>17 anticipates any element or any claim of the patents</p> <p>18 that are asserted here, correct?</p> <p>19 A In this courtroom.</p> <p>20 Q So you know of no other invalidity expert who's</p> <p>21 going to offer opinions on P.O. Writer, do you?</p> <p>22 A No.</p> <p>23 Q Let's talk a little bit about RIMS now, if we can.</p> <p>24 You reviewed the inventor's deposition testimony in</p> <p>25 preparation for your expert report, correct?</p>
<p>2545</p> <p>1 Q So as far as the jury is concerned with regard to</p> <p>2 the testimony on J-CON, they can forget about that for</p> <p>3 any purposes of an element by element, claim by claim</p> <p>4 analysis for anticipation and obviousness, right?</p> <p>5 A I don't know if it's my place to say what the jury</p> <p>6 can forget about.</p> <p>7 Q But you didn't give them any opinions that it</p> <p>8 invalidates any claims, right?</p> <p>9 A Not in this courtroom.</p> <p>10 THE COURT: Well, you didn't give the jury</p> <p>11 any, Dr. Shamos, so it had to be in this courtroom.</p> <p>12 So the answer to that is no.</p> <p>13 THE WITNESS: Correct.</p> <p>14 Q And let me ask you this: You put up --</p> <p>15 MR. ROBERTSON: Can you put up just the cover</p> <p>16 page of Defendant's Exhibit No. 96, please.</p> <p>17 Q Now, you showed this J-CON manual, Volume I, cover</p> <p>18 page, correct?</p> <p>19 A Yes.</p> <p>20 Q That's the only thing you offered to the jury when</p> <p>21 you brought up J-CON, this cover page that has the</p> <p>22 title of the manual, and that's it, right?</p> <p>23 A No, I had a slide with the bullet points about</p> <p>24 J-CON.</p> <p>25 Q I'm talking about this exhibit, Defendant's</p>	<p>2547</p> <p>1 A Yes.</p> <p>2 Q And you're aware that the RIMS system starting</p> <p>3 perhaps in the late '80s all the way up until the year</p> <p>4 2000 went through many iterations, correct, many</p> <p>5 different versions?</p> <p>6 A Yes.</p> <p>7 Q Which version are you relying on when you are</p> <p>8 rendering your opinions?</p> <p>9 A That described in the '989 patent.</p> <p>10 Q So it's only confined to the '989 patent, right?</p> <p>11 You're not relying on and you didn't offer any</p> <p>12 testimony with respect to any versions that were in</p> <p>13 commercial use between the late '90s and 1994, for</p> <p>14 example, right?</p> <p>15 A I don't have personal knowledge, but there was</p> <p>16 testimony that the '989 patent fairly described the</p> <p>17 actual RIMS system as it was distributed.</p> <p>18 Q There was also testimony from the inventors in</p> <p>19 their deposition that many of the functionalities in</p> <p>20 the '989 patent were never implemented. Do you recall</p> <p>21 reviewing that?</p> <p>22 A Yes.</p> <p>23 Q So what you're relying on when you offer your</p> <p>24 opinions, though, is just the '989 patent; isn't that</p> <p>25 right?</p>

<p style="text-align: right;">2548</p> <p>1 A No.</p> <p>2 Q Did you point to any other versions or produce any</p> <p>3 other documentation of the technical nature of the</p> <p>4 RIMS system as being used between 1989 and 2000?</p> <p>5 A No, I didn't personally, because, as I said, I</p> <p>6 don't have personal knowledge of the RIMS system as</p> <p>7 distributed.</p> <p>8 Q It would be fair to say that the inventors had</p> <p>9 personal knowledge of the RIMS system because they</p> <p>10 worked with it, right?</p> <p>11 A I don't know what knowledge they had. I know what</p> <p>12 they said.</p> <p>13 Q Well, you know that Mr. Momyer and Mr. Johnson are</p> <p>14 actually inventors of the '989 patent, correct?</p> <p>15 A Yes.</p> <p>16 Q So it would be fair to say that Mr. Momyer and</p> <p>17 Mr. Johnson are in a better position than you to</p> <p>18 understand what's in that patent, correct?</p> <p>19 A I wouldn't say that. I think they might be in a</p> <p>20 better position to know what systems were actually</p> <p>21 distributed, but I can read the patent as well as they</p> <p>22 can.</p> <p>23 Q So you know better than the inventors with respect</p> <p>24 to the '989 patent?</p> <p>25 A Anybody can read the patent. The patent says what</p>	<p style="text-align: right;">2550</p> <p>1 A Correct.</p> <p>2 Q You never saw the Fisher prototype that was</p> <p>3 created as part of the electronic sourcing project</p> <p>4 that Fisher did with IBM?</p> <p>5 A Correct.</p> <p>6 Q You didn't see any technical documents with</p> <p>7 respect to the electronic sourcing project that IBM</p> <p>8 did with Fisher-Scientific, correct?</p> <p>9 A Correct.</p> <p>10 Q You never --</p> <p>11 THE COURT: Wait a minute.</p> <p>12 THE WITNESS: I don't think that's actually</p> <p>13 correct. I think there were some proposal documents</p> <p>14 or some technical descriptions, proposals, between IBM</p> <p>15 and Fisher that I looked at, I think.</p> <p>16 Q It was a contract, a statement of work?</p> <p>17 A Yes.</p> <p>18 Q That was where they had to do almost a year and a</p> <p>19 half of work to come up with a working prototype for</p> <p>20 this system; isn't that right? That's what you're</p> <p>21 talking about?</p> <p>22 A Yes.</p> <p>23 Q You know a gentleman by the name of Mr. Charles</p> <p>24 Gounaris or are you aware of him?</p> <p>25 A I'm aware of him. I don't know him.</p>
<p style="text-align: right;">2549</p> <p>1 it says.</p> <p>2 Q So with respect to the evidence you presented,</p> <p>3 though, did you present anything outside of the '989</p> <p>4 patent to support your opinions?</p> <p>5 A Not in this courtroom.</p> <p>6 Q Let's talk about the TV/2 search program for a</p> <p>7 minute, if we can. Do you recall talking about that</p> <p>8 system?</p> <p>9 A Yes.</p> <p>10 Q In preparing your report, nowhere in your report</p> <p>11 do you ever indicate that you saw a TV/2 search</p> <p>12 program in operation, correct?</p> <p>13 A Correct.</p> <p>14 Q Nowhere in your report did you say that you ever</p> <p>15 reviewed any TV/2 source code, correct?</p> <p>16 A Correct.</p> <p>17 Q Nowhere in your report did you indicate that you</p> <p>18 ever saw any user guides with respect to TV/2?</p> <p>19 A Well, it depends on what a user guide is, but I</p> <p>20 revealed in my report exactly what TV/2 documents I</p> <p>21 looked at. Whether you want to characterize the</p> <p>22 general information manual as a user guide or not is</p> <p>23 up to you.</p> <p>24 Q You never saw any demonstrations of the TV/2,</p> <p>25 correct?</p>	<p style="text-align: right;">2551</p> <p>1 Q You reviewed his deposition in preparation for</p> <p>2 your testimony, correct?</p> <p>3 A Yes.</p> <p>4 Q And you're also aware of a young woman named</p> <p>5 Pamela Eng?</p> <p>6 A I've heard the name. I don't know her.</p> <p>7 Q You reviewed her deposition in preparation for</p> <p>8 your report, correct?</p> <p>9 A Yes.</p> <p>10 Q Are you aware that Mr. Gounaris and Ms. Eng are</p> <p>11 also paid witnesses for Lawson?</p> <p>12 A I think I may have seen the name Gounaris on a</p> <p>13 schedule of witnesses that were going to testify. I</p> <p>14 don't recall Eng.</p> <p>15 Q Well, did you make any effort to speak to</p> <p>16 Mr. Gounaris or Ms. Eng about their knowledge of the</p> <p>17 TV/2?</p> <p>18 A No.</p> <p>19 Q So it's fair to say you don't rely on some actual</p> <p>20 operating TV/2 system in your report because you never</p> <p>21 saw it, right? You just have two documents that</p> <p>22 you're relying on; isn't that right?</p> <p>23 A Yes.</p> <p>24 THE COURT: Which question do you want him to</p> <p>25 answer?</p>

<p>2556</p> <p>1 any misapprehension as to what was being disclosed as</p> <p>2 part of what RIMS functionality was necessary to be</p> <p>3 modified in order to come up with the inventions of</p> <p>4 the electronic sourcing patent, correct?</p> <p>5 A Well, the examiner didn't consider it as prior</p> <p>6 art. The examiner considered it for what it said</p> <p>7 about the RIMS system.</p> <p>8 Q Well, the examiner has access to be able to go and</p> <p>9 look at any patent, doesn't he, that's available in</p> <p>10 the Patent Office?</p> <p>11 A Yes.</p> <p>12 Q And if the inventors repeatedly throughout all 28</p> <p>13 columns of the patent described what they thought the</p> <p>14 RIMS system disclosed, he wasn't under any illusions</p> <p>15 as to what they were representing, was he?</p> <p>16 A He was under an illusion.</p> <p>17 Q Oh, I see. So you know what the examiner was</p> <p>18 thinking when he was reviewing the RIMS patent?</p> <p>19 A Yes, I do because I read the file history. I read</p> <p>20 what he said.</p> <p>21 Q You didn't offer any opinions in direct testimony</p> <p>22 with respect to the file history and what the examiner</p> <p>23 said, did you, sir?</p> <p>24 A No, but you're asking me about it now.</p> <p>25 Q So the answer to my question is no, you didn't</p>	<p>2558</p> <p>1 Q The next element says that this electronic</p> <p>2 sourcing system has to have a means for selecting the</p> <p>3 product catalogs, right?</p> <p>4 A Yes.</p> <p>5 Q So the product catalogs that are being referred to</p> <p>6 in this second element are the product catalogs that</p> <p>7 were identified in the first element, right?</p> <p>8 A Yes.</p> <p>9 Q Next element says you have to have a means for</p> <p>10 searching for matching items among the selected</p> <p>11 product catalogs. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q The selected product catalogs that were being</p> <p>14 referred here are the product catalogs that were</p> <p>15 selected with the means in the second element, right?</p> <p>16 A Yes.</p> <p>17 Q The fourth element says you have to have a means</p> <p>18 for building a requisition using data relating to</p> <p>19 selected matching items and their associated sources.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q The selected matching items here are the selected</p> <p>23 matching items that had been searched for in the</p> <p>24 selected product catalogs, right?</p> <p>25 A Maybe.</p>
<p>2557</p> <p>1 offer any opinions with respect to the file history,</p> <p>2 correct?</p> <p>3 A That's right.</p> <p>4 MR. ROBERTSON: Could we go back and look at</p> <p>5 Claim Three again.</p> <p>6 Q Now, you understand that for purposes of both</p> <p>7 infringement and invalidity you need to consider the</p> <p>8 claim as a whole; is that right?</p> <p>9 A Yes.</p> <p>10 Q And just using this claim as an example, this has</p> <p>11 six elements, I think, we've already confirmed, right?</p> <p>12 A Yes.</p> <p>13 Q And the preamble of the electronic sourcing system</p> <p>14 is also an element of the claim the Court has</p> <p>15 construed, right?</p> <p>16 A Yes.</p> <p>17 Q So when we go through this on an element by</p> <p>18 element basis, you're familiar with the term what's</p> <p>19 called an antecedent basis?</p> <p>20 A Yes.</p> <p>21 Q So let's look at the first element. The first</p> <p>22 element says that the electronic sourcing system has</p> <p>23 to have at least two product catalogs. I just want to</p> <p>24 zero in on that. Right?</p> <p>25 A Yes.</p>	<p>2559</p> <p>1 Q Excuse me?</p> <p>2 A Maybe.</p> <p>3 Q All right. And the means for processing the</p> <p>4 requisition to generate one or more purchase orders</p> <p>5 for the selected matching items refers to the selected</p> <p>6 matching items in the element above, right?</p> <p>7 A Yes.</p> <p>8 Q And then, finally, the means for converting data</p> <p>9 relating to selected matching item and then associated</p> <p>10 source to data relating to an item in a different</p> <p>11 source, those selected matching items are the ones</p> <p>12 that were placed on the purchase order in the element</p> <p>13 above, correct?</p> <p>14 A Maybe.</p> <p>15 Q And the sources that are being referred here refer</p> <p>16 back to the element three, which are the selected</p> <p>17 matching items and their associated sources, right?</p> <p>18 A Maybe.</p> <p>19 Q So we're talking about multiple sources there,</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q So if I don't have product catalogs in the prior</p> <p>23 art system, I can't satisfy any of these elements, can</p> <p>24 I?</p> <p>25 A When you say the prior art system --</p>

<p>2560</p> <p>1 Q Any prior art system. If I don't have a prior art 2 system that has at least two product catalogs, then 3 since all these elements in some part can or may 4 depend on the one above, I can't satisfy any of those 5 elements, isn't that right, since they all depend on 6 the one above them? Can you answer that question 7 fairly yes or no? 8 A Let me think about it. Yes. 9 Q All right. So if a prior art system doesn't have 10 catalogs, it doesn't satisfy any of these elements, 11 right? 12 A That's right. 13 Q So when you said the RIMS system, you considered 14 for your purposes that it had all the elements of the 15 claim except two or more catalogs; is that right? 16 A Yes. 17 Q But that's wrong now in consideration of the fact 18 that if it doesn't have two product catalogs, it can't 19 satisfy all the rest of these elements; isn't that 20 right? Isn't that what you just said? 21 A It's right if you add the two product catalogs. 22 Q But if you don't have the two product catalogs 23 which you assumed for purposes of your RIMS opinion, 24 you don't satisfy any of the elements of the claim? 25 A That's right.</p>	<p>2562</p> <p>1 working in combination with said catalog searching 2 module to determine multiple sources for an item, 3 correct? 4 A Well, it certainly doesn't have all of that, no. 5 Q And the TV/2 reference doesn't disclose or suggest 6 that the determination system including a cross 7 reference table matching an identification code from a 8 first located item with a second identification code 9 from a second located item, right? 10 A Right. 11 Q And you would agree, wouldn't you, that there had 12 to be an interface created between the TV/2 search 13 programs and the RIMS system for an electronic 14 sourcing system; is that right? 15 A Well, what I agree with is to integrate the two, 16 one would have to create an interface, yes. 17 Q And you would agree also that additional search 18 capabilities were added to the TV/2 search program for 19 the Fisher electronic sourcing system; isn't that 20 right? 21 A That's my understanding. 22 Q Is it your understanding that TV/2 search program 23 could not do Boolean search functionalities when IBM 24 presented it to Fisher-Scientific? 25 MR. McDONALD: Objection, Your Honor.</p>
<p>2561</p> <p>1 Q And that would be true on any claim that has this 2 antecedent basis where there is an element that 3 includes a catalog and then there are other claims 4 that would require the antecedent basis of a catalog; 5 isn't that right? 6 MR. McDONALD: I object to the form, Your 7 Honor. I think that's confusing. 8 MR. ROBERTSON: I'll rephrase. I think it 9 was, too. 10 Q If there's a requirement of a catalog and then 11 there's a subsequent element that relies on the fact 12 that a catalog is in the claim, it couldn't satisfy 13 that element, right? 14 A Right. 15 Q Isn't it true that the TV/2 reference does not 16 disclose or suggest at least two catalogs a generally 17 equivalent item from a different source said 18 requisition module working in combination with said 19 catalog searching module to determine multiple sources 20 for said item? 21 A I wasn't expecting the question to be that long. 22 Can you repeat that? 23 Q The TV/2 reference does not disclose or suggest at 24 least two catalogs including a generally equivalent 25 item from a different source said requisition module</p>	<p>2563</p> <p>1 Boolean search isn't one of the claims. It's 2 irrelevant. 3 MR. ROBERTSON: I think search capability is 4 and Boolean search capability is in the accused 5 products and in the commercial embodiment. So I think 6 it does have relevance. 7 MR. McDONALD: This is what I'm talking 8 about, Your Honor. He's trying to match up things 9 that have nothing to do with the claim by talking 10 about Boolean searching. The issue is searching. 11 THE COURT: Why isn't that right? 12 MR. ROBERTSON: I think Boolean searching is 13 a form of searching, Your Honor. 14 THE COURT: So what? 15 MR. ROBERTSON: I'll move on, Your Honor. 16 THE COURT: I sustain the objection. 17 BY MR. ROBERTSON: 18 Q Now, you're aware that when IBM met with 19 Fisher-Scientific, they presented this TV/2 product as 20 a potential product to use in the electronic sourcing 21 project, correct? 22 A Yes. 23 Q And thereafter they entered into a contract and 24 began working together, correct? 25 A Yes.</p>

<p style="text-align: right;">2564</p> <p>1 Q And you're aware that Fisher committed significant</p> <p>2 resources to the project, correct?</p> <p>3 A Yes, I think anybody would regard the expenditure</p> <p>4 as significant.</p> <p>5 Q So they committed not only the expenditures, but</p> <p>6 they also committed human resources? That is, there</p> <p>7 were the four inventors, two of which were full-time</p> <p>8 on the project for a year and a half. You're aware of</p> <p>9 that, right?</p> <p>10 A I don't recall who was full time and who wasn't,</p> <p>11 but they did commit human resources.</p> <p>12 Q And they also had IBM commit significant</p> <p>13 resources; isn't that right?</p> <p>14 A Yes.</p> <p>15 Q And the project lasted a considerable time and you</p> <p>16 have seen that statement of work where there were over</p> <p>17 81 tasks that needed to be completed, correct?</p> <p>18 MR. McDONALD: Objection, Your Honor. I</p> <p>19 don't see what relevance this has with anything. How</p> <p>20 long it took to put the product together has nothing</p> <p>21 to do with it.</p> <p>22 THE COURT: Overruled.</p> <p>23 Q Correct?</p> <p>24 A I need you to repeat the question.</p> <p>25 Q Sure. There was a statement of work I think that</p>	<p style="text-align: right;">2566</p> <p>1 the patent. It has much more.</p> <p>2 Q How do you know? You have never even seen the</p> <p>3 commercial product.</p> <p>4 A But I've read the description of work.</p> <p>5 Q But you didn't know what the actual commercial</p> <p>6 product was, right?</p> <p>7 A As I said, I read the description of work, and</p> <p>8 what IBM and Fisher did together was a lot more than</p> <p>9 is claimed in the patents.</p> <p>10 Q Let me ask you to take a look at what is</p> <p>11 Exhibit 4. Plaintiff's Exhibit 4. Do you have that?</p> <p>12 A Yes. Well, it looks like a file history.</p> <p>13 Q It's the file history for the '683 patent. Can</p> <p>14 you confirm that?</p> <p>15 A Not at this resolution.</p> <p>16 Q Well, it's in your notebook, I believe.</p> <p>17 THE COURT: In that big notebook there in</p> <p>18 front of you, is that what you're talking about?</p> <p>19 MR. ROBERTSON: Yes, sir.</p> <p>20 THE COURT: Maybe it's easier to do that</p> <p>21 because I see his problem.</p> <p>22 It's Plaintiff's Exhibit 4?</p> <p>23 MR. ROBERTSON: Yes, sir.</p> <p>24 THE COURT: Do you have it, sir?</p> <p>25 THE WITNESS: Well, I have what's marked as</p>
<p style="text-align: right;">2565</p> <p>1 you referenced before that had a number of tasks that</p> <p>2 needed to be accomplished in order to complete the</p> <p>3 electronic sourcing project that led to a prototype</p> <p>4 for what is claimed in the inventions in this case,</p> <p>5 correct?</p> <p>6 A Yes, I saw that.</p> <p>7 Q And you also saw that Fisher-Scientific committed</p> <p>8 more than \$600,000 in cash to the project, correct?</p> <p>9 A Yes.</p> <p>10 Q And I don't know if I asked this already, but</p> <p>11 you're aware that it took some substantial time,</p> <p>12 perhaps as much as a year and a half?</p> <p>13 A Yes.</p> <p>14 Q Well, why isn't it when Fisher walked in IBM</p> <p>15 didn't say, You know, you don't need to do that.</p> <p>16 Here's a brochure. It's right here. There's the</p> <p>17 invention?</p> <p>18 A Because IBM likes to charge money for services.</p> <p>19 Q So you think they just did this whole thing as a</p> <p>20 charade for a year and a half working with</p> <p>21 Fisher-Scientific just to be able to charge money for</p> <p>22 their services?</p> <p>23 A It wasn't a charade. What Fisher needed was a</p> <p>24 commercial product that would serve its needs. The</p> <p>25 commercial product is different from what's claimed in</p>	<p style="text-align: right;">2567</p> <p>1 PX 4, but it doesn't begin with the same cover page</p> <p>2 that's on the screen.</p> <p>3 BY MR. ROBERTSON:</p> <p>4 Q Why don't we just focus on what's in front of you</p> <p>5 if you can for now, and maybe I can direct you to a</p> <p>6 page that we're going to be focusing on. You did say</p> <p>7 you considered this for purposes of your report,</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 THE COURT: Which file history, the '683?</p> <p>11 MR. ROBERTSON: Yes, sir.</p> <p>12 Q If you'd go to -- do you see the lower right-hand</p> <p>13 corner there's a number of what are called Bates</p> <p>14 numbers. You're familiar with that term, right?</p> <p>15 A Yes.</p> <p>16 Q Actually, go to the page that starts with 721. Do</p> <p>17 you see that? Actually, if you start before that,</p> <p>18 there's a page 720. It says office action summary?</p> <p>19 A Yes.</p> <p>20 Q If you'd turn to the next page -- actually, yes,</p> <p>21 can you explain to the jury what an office action is,</p> <p>22 sir, if you know?</p> <p>23 A I know.</p> <p>24 Q What is it?</p> <p>25 A During the prosecution of a patent, there's</p>

<p>2568</p> <p>1 correspondence that takes place between the Patent</p> <p>2 Office and the applicant. The applicants will file an</p> <p>3 application and the office reviews it. And if they</p> <p>4 reject any claims or if they allow any claims, they do</p> <p>5 so by providing a document back to the applicant.</p> <p>6 It's called an office action in which the nature of</p> <p>7 the action is stated and an explanation is given by</p> <p>8 the examiner for why he did what he did.</p> <p>9 Q Here under heading No. 4 it says the disclosure is</p> <p>10 objected to because of the following informalities; do</p> <p>11 you see that?</p> <p>12 A Yes.</p> <p>13 Q The disclosure, that's what's contained in the</p> <p>14 application when the applicants first filed the patent</p> <p>15 describing what they believe their invention is,</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q That becomes the specification of the patent if</p> <p>19 the patent issues?</p> <p>20 A Correct.</p> <p>21 Q And it indicates here that the applicant must</p> <p>22 update some things. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q One of the things it says, the application data on</p> <p>25 page 12 with the current status of each of the</p>	<p>2570</p> <p>1 examiner that he understands that this is now the '989</p> <p>2 patent, right?</p> <p>3 A No, he knew it was a patent.</p> <p>4 Q That's why he put it in there, right?</p> <p>5 A Yes.</p> <p>6 Q Now, I think you agreed with me earlier that when</p> <p>7 you are going to apply for a patent or when you're</p> <p>8 looking at a patent for purposes of infringement or</p> <p>9 invalidity you need to look at it and read it as a</p> <p>10 whole, correct?</p> <p>11 A I'm sorry. Could you say it again?</p> <p>12 Q Yeah. You need to view the claim as a whole, not</p> <p>13 its little pieces, right?</p> <p>14 A I didn't think it was phrased that way in your</p> <p>15 original question, but, yes, you evaluate the claim as</p> <p>16 a whole for invalidity purposes.</p> <p>17 Q So you can't say, for example, if there's an</p> <p>18 element that says in determining whether there's a</p> <p>19 selected matching item available in inventory, you</p> <p>20 just can't go and focus on a prior art reference and</p> <p>21 say, Well, there is a discussion of inventory. So</p> <p>22 that element is satisfied. You have to read it in the</p> <p>23 context of the entire claim; isn't that right?</p> <p>24 A Yes.</p> <p>25 THE COURT: Is your question you have to read</p>
<p>2569</p> <p>1 referenced applications, e.g. now abandoned or now</p> <p>2 patent number, question mark, or which is abandoned,</p> <p>3 and now a serial number, symbol, question mark, etc.,</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q Why don't we go to page 575 of the document. Do</p> <p>7 you see here at the bottom of the page, in fact,</p> <p>8 there's a reference to an application number? Do you</p> <p>9 see it? It's a little difficult to read, but it's in</p> <p>10 the lower left-hand corner.</p> <p>11 A Yes.</p> <p>12 Q That application number has been crossed out and</p> <p>13 there the examiner has now written United States</p> <p>14 Patent No. 5,712,989. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q So the examiner has appreciated that what was now</p> <p>17 being fully described was the actual '989 RIMS patent</p> <p>18 that it issued, correct?</p> <p>19 A Well, what happened was that during the</p> <p>20 prosecution of the '683 patent, the '989 patent</p> <p>21 issued, and the examiner required the applicants to</p> <p>22 amend the specification to replace the word</p> <p>23 "application" with the patent number that was</p> <p>24 subsequently granted.</p> <p>25 Q So there we have actually appreciation by the</p>	<p>2571</p> <p>1 the prior art in context of the entire claim of the</p> <p>2 patent-in-suit? Is that your question?</p> <p>3 MR. ROBERTSON: I think that's right, Your</p> <p>4 Honor.</p> <p>5 THE COURT: You didn't make the antecedent</p> <p>6 noun clear.</p> <p>7 MR. ROBERTSON: I'm sorry. Let me see if I</p> <p>8 can.</p> <p>9 Q You have to consider whether the prior art</p> <p>10 satisfies that claim element when you look at the</p> <p>11 claim and consider it in its entirety; isn't that</p> <p>12 right?</p> <p>13 A For obviousness purposes, you must consider the</p> <p>14 claim as a whole.</p> <p>15 Q For anticipation purposes don't you need to</p> <p>16 consider the claim as a whole, as well?</p> <p>17 A I don't think so.</p> <p>18 MR. ROBERTSON: Can we look at slide 27, if</p> <p>19 we could.</p> <p>20 Q This is what you relied on when you said RIMS</p> <p>21 search for items in multiple sources; do you see that?</p> <p>22 A Yes.</p> <p>23 Q And you had certain little excerpts from the '989</p> <p>24 patent. Do you see that?</p> <p>25 A Yes.</p>

<p style="text-align: right;">2588</p> <p>1 Q You said that the item master didn't satisfy the</p> <p>2 catalog because the data was modified, could be</p> <p>3 modified or had to be modified in some way, right?</p> <p>4 A I gave many reasons.</p> <p>5 Q Is that one?</p> <p>6 A That was one.</p> <p>7 Q And the customer could delete information, so</p> <p>8 that's why it didn't satisfy the Court's definition?</p> <p>9 A I don't think I said it that way.</p> <p>10 Q I think you said that -- well, let me ask you</p> <p>11 this. Didn't you indicate that it doesn't satisfy the</p> <p>12 Court's construction if only a partial items were</p> <p>13 entered into the item master?</p> <p>14 MR. McDONALD: Your Honor, I think we're back</p> <p>15 on the infringement part of the case, and I think it's</p> <p>16 getting awfully confusing. I object. It's outside</p> <p>17 the scope of my direct examination.</p> <p>18 THE COURT: I thought that's what we were</p> <p>19 doing. Why are you doing this? Are you trying to</p> <p>20 establish that he said one thing in infringement and</p> <p>21 another in invalidity and that's why you're asking</p> <p>22 about infringement?</p> <p>23 MR. ROBERTSON: Yes, sir.</p> <p>24 THE COURT: Well, then the objection is</p> <p>25 overruled. You can do that, if you can do it.</p>	<p style="text-align: right;">2590</p> <p>1 construction published by a vendor - excuse me - of</p> <p>2 published by a vendor, that's right, it has to be</p> <p>3 carefully handpicked by a customer who decides what to</p> <p>4 import?</p> <p>5 A No. That's confusing and wrong. I don't know</p> <p>6 what that means.</p> <p>7 Q You said it wouldn't satisfy the claim if it were</p> <p>8 carefully handpicked by a customer and the customer</p> <p>9 decided what to import into the item master, correct?</p> <p>10 A Yeah. We had a discussion about how much of a</p> <p>11 catalog would you have to import for it to remain a</p> <p>12 catalog, and at what point wouldn't it be a catalog</p> <p>13 anymore.</p> <p>14 Q But your opinion was that if a customer decides</p> <p>15 what to import into an item master, that doesn't</p> <p>16 constitute a catalog, correct?</p> <p>17 A It may not.</p> <p>18 Q You didn't offer any opinions with respect to</p> <p>19 invalidity as to whether a decision was made to import</p> <p>20 some data into this TV/2 and RIMS combination you had,</p> <p>21 whether that would constitute a catalog, didn't you?</p> <p>22 A But many times during my testimony I said under</p> <p>23 the plaintiff's theory of infringement --</p> <p>24 Q I'm not talking about the plaintiff's theory of</p> <p>25 infringement. I'm talking about what you say was</p>
<p style="text-align: right;">2589</p> <p>1 BY MR. ROBERTSON:</p> <p>2 Q Didn't you indicate for purposes of infringement</p> <p>3 that if the item master didn't contain the entire</p> <p>4 catalog, it didn't satisfy the Court's construction as</p> <p>5 published by a vendor?</p> <p>6 A No.</p> <p>7 Q Did you say even if a customer loads all item data</p> <p>8 from a published vendor, if it only comes from one</p> <p>9 place, that it doesn't mean it's a catalog within the</p> <p>10 Court's construction?</p> <p>11 A I don't think I said that.</p> <p>12 Q Let me start back -- I don't think I asked you</p> <p>13 this question. You had some slides and you were asked</p> <p>14 about some bullet points. One of the bullet points</p> <p>15 was about the catalog at issue. Let me ask you this:</p> <p>16 Isn't it true you said that you had to look at where</p> <p>17 the data in the item master comes from because the</p> <p>18 item master starts out empty when the system is</p> <p>19 installed. Do you recall that?</p> <p>20 A Yes.</p> <p>21 Q The TV/2 starts out empty, doesn't it?</p> <p>22 A Well, the TV/2 system as delivered by IBM starts</p> <p>23 out empty.</p> <p>24 Q Didn't you give an opinion with respect to</p> <p>25 infringement that in order to satisfy the Court's</p>	<p style="text-align: right;">2591</p> <p>1 required under the Court's construction for published</p> <p>2 by a vendor, not our theory. We don't have a theory.</p> <p>3 We're following the claim construction. I want to</p> <p>4 know what you said satisfied the claims. You said if</p> <p>5 the customer only imported some of the data, it didn't</p> <p>6 constitute a catalog, correct?</p> <p>7 A Yes.</p> <p>8 Q You didn't offer any opinions with respect to that</p> <p>9 on this TV/2 and RIMS invalidity argument, did you?</p> <p>10 A But in TV/2 --</p> <p>11 THE COURT: Yes or no? Did you offer those</p> <p>12 opinions?</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. ROBERTSON: I guess the record will speak</p> <p>15 for itself on that.</p> <p>16 BY MR. ROBERTSON:</p> <p>17 Q Did you indicate in your opinions on validity that</p> <p>18 the TV/2 brochure disclosed searching for catalogs,</p> <p>19 correct?</p> <p>20 A Searching in catalogs, yes.</p> <p>21 Q Didn't you indicate that the search was how the</p> <p>22 TV/2 can select the catalog to search?</p> <p>23 A I'm sorry?</p> <p>24 Q Didn't you indicate that the TV/2 brochure taught</p> <p>25 that you can select a catalog to search by searching</p>

<p style="text-align: right;">2620</p> <p>Farber - Direct 2620</p> <p>1 some testimony about the ePlus/Ariba license agreement; do you</p> <p>2 recall that?</p> <p>3 A Yes.</p> <p>4 Q Has ePlus ever licensed the three patents that are at</p> <p>5 issue in this case to any other companies?</p> <p>6 A Yes.</p> <p>7 Q What other companies has ePlus licensed the patents to?</p> <p>8 A We've licensed the patents to companies such as SAP,</p> <p>9 SciQuest, Verian, Perfect Commerce.</p> <p>10 Q And approximately how much revenue has ePlus received for</p> <p>11 licensing the three patents that are in suit in this case?</p> <p>12 A Close to 58 million.</p> <p>13 Q Do you see in front of you, Mr. Farber, is that a complete</p> <p>14 list of the licensees for ePlus's patents-in-suit?</p> <p>15 A Yes, it is.</p> <p>16 Q Has ePlus ever licensed the patents-in-suit to anyone else</p> <p>17 besides these five companies?</p> <p>18 A There was a patent license granted to a company called</p> <p>19 ProcureNet which is the company -- or piece of the company that</p> <p>20 ePlus had acquired.</p> <p>21 Q And that was back in what time frame?</p> <p>22 A It was around the acquisition, about ten years or so ago.</p> <p>23 Q Would you consider each of the five companies listed here,</p> <p>24 Ariba, SAP, Perfect Commerce, Verian, and SciQuest to be</p> <p>25 competitors of ePlus?</p>	<p style="text-align: right;">2622</p> <p>Farber - Direct 2622</p> <p>1 MR. STRAPP: Can you blow up the first paragraph</p> <p>2 there, please.</p> <p>3 Q When was this particular agreement entered into between</p> <p>4 ePlus and Ariba?</p> <p>5 A February 12th, 2005.</p> <p>6 Q Mr. Farber, can you turn, please, to section F of the</p> <p>7 agreement. That's on page four of the license, bottom of the</p> <p>8 page, paragraph 11. It's got the Bates number on the bottom</p> <p>9 right 600.</p> <p>10 A 600?</p> <p>11 Q It's up on your screen as well.</p> <p>12 THE COURT: May I see counsel for just a minute.</p> <p>13</p> <p>14 (Discussion at sidebar as follows:)</p> <p>15</p> <p>16 THE COURT: I'm a little bit confused about using</p> <p>17 these exhibits. Mr. McDonald, do you want the exhibits in?</p> <p>18 MR. McDONALD: We had opposed their admission at one</p> <p>19 point, Your Honor, but you said they could come in. We would</p> <p>20 stipulate to what he's already testified about the cumulative</p> <p>21 numbers. I think he could probably get through it without</p> <p>22 having to go through these things.</p> <p>23 THE COURT: Why do we need to have the documents in</p> <p>24 if they'll agree to the amounts?</p> <p>25 MR. STRAPP: I wanted to show that each one of the</p>
<p style="text-align: right;">2621</p> <p>Farber - Direct 2621</p> <p>1 A Yes. They are direct competitors.</p> <p>2 Q And competitors in the e-procurement software industry?</p> <p>3 A That's correct.</p> <p>4 Q What about ProcureNet, are they a competitor of ePlus?</p> <p>5 A No, ProcureNet is not a competitor.</p> <p>6 Q Listed here you have the five license agreements for the</p> <p>7 companies ePlus considers as competitors to the e-procurement</p> <p>8 software industry?</p> <p>9 A That's correct.</p> <p>10 Q Are you personally familiar with license agreements, the</p> <p>11 five license agreements that you've described?</p> <p>12 A I am.</p> <p>13 Q How do you have any familiarity with these agreements?</p> <p>14 A I was directly responsible and involved in the negotiation</p> <p>15 and the finalization of these agreements.</p> <p>16 Q For each five of the agreements?</p> <p>17 A Correct.</p> <p>18 Q Mr. Farber, you have a notebook in front of you. Could</p> <p>19 you please turn to Plaintiff's Exhibit 43.</p> <p>20 A Okay.</p> <p>21 Q Do you recognize the document in front of you?</p> <p>22 A Yes.</p> <p>23 Q What is this document here?</p> <p>24 A This is the license and settlement agreement between Ariba</p> <p>25 and ePlus.</p>	<p style="text-align: right;">2623</p> <p>Farber - Direct 2623</p> <p>1 licenses were for the same three patents that are in suit in</p> <p>2 this case and that each of these companies are the competitors.</p> <p>3 I mean, maybe I can do that without showing the documents.</p> <p>4 MR. McDONALD: I've seen them all. They all are the</p> <p>5 three patents-in-suit.</p> <p>6 THE COURT: I'm sure if he knows that, he'll testify</p> <p>7 to it. Then we don't have to get into any discussion of that.</p> <p>8 MR. McDONALD: That would certainly be what we'd</p> <p>9 appreciate, Your Honor.</p> <p>10 MR. STRAPP: All right, so we'll do it without</p> <p>11 showing them the documents.</p> <p>12 THE COURT: Then we don't have to get into -- the</p> <p>13 reason I ask this is because if you want to show that they were</p> <p>14 the product of settlements, I need to give the jury some</p> <p>15 instructions about it.</p> <p>16 In other words, if you want to discount their</p> <p>17 effectiveness by examining on -- that they came out of</p> <p>18 litigation, there are different lawyers that approach that</p> <p>19 issue differently about whether they want to get into that or</p> <p>20 not. Certainly you can get into it, and you can have the</p> <p>21 exhibits in in that event, but if you're not going to approach</p> <p>22 it that way --</p> <p>23 MR. McDONALD: Well, I think he's already identified</p> <p>24 them as settlement and license agreements. That's what they're</p> <p>25 all called, and if he just has him establish that they are in</p>

<p style="text-align: right;">2624</p> <p>Farber - Direct 2624</p> <p>1 settlements of litigation, I don't know that --</p> <p>2 THE COURT: That's sufficient for you?</p> <p>3 MR. McDONALD: Yeah.</p> <p>4 THE COURT: Then let's do it that way, and don't use</p> <p>5 the documents.</p> <p>6</p> <p>7 (End of sidebar discussion.)</p> <p>8</p> <p>9 Q Mr. Farber, we were talking about the ePlus/Ariba license</p> <p>10 agreement. Can you tell me specifically what was exchanged or</p> <p>11 what was licensed as part of that agreement between ePlus and</p> <p>12 Ariba? Let's start first with Ariba. What did Ariba license,</p> <p>13 if anything, to ePlus as part of that agreement?</p> <p>14 A What Ariba licensed to ePlus is the ability for ePlus to</p> <p>15 utilize its patents.</p> <p>16 Q So Ariba licensed its own patents to ePlus as part of this</p> <p>17 license agreement?</p> <p>18 A That's correct.</p> <p>19 THE COURT: When you say its patents, you mean the</p> <p>20 right to use Ariba's patents?</p> <p>21 THE WITNESS: That's correct.</p> <p>22 THE COURT: All right, go ahead.</p> <p>23 Q What did ePlus license to Ariba?</p> <p>24 A Conversely, we had provided the rights for Ariba to</p> <p>25 utilize our patents.</p>	<p style="text-align: right;">2626</p> <p>Farber - Direct 2626</p> <p>1 A Okay. It was -- looks like it was finalized</p> <p>2 December 11th, 2006.</p> <p>3 Q Who is SAP?</p> <p>4 A SAP is a large company that some of the products that they</p> <p>5 offer competed with our solutions.</p> <p>6 Q And I didn't get a chance to ask you, but who is Ariba?</p> <p>7 A Same. Ariba was a large company that competed with ePlus</p> <p>8 in the market.</p> <p>9 Q Can you describe for me what was licensed as part of the</p> <p>10 ePlus/SAP license agreement?</p> <p>11 A We had provided, in a similar fashion as we had done for</p> <p>12 Ariba, we provided them the ability to utilize the three</p> <p>13 patents that are in suit here. We granted them a license to</p> <p>14 utilize those patents.</p> <p>15 Q And what did SAP give to ePlus in exchange for a right to</p> <p>16 use the three patents that are in suit in this case?</p> <p>17 A I have to just refresh my memory if they had</p> <p>18 cross-granted --</p> <p>19 Q Let me direct your attention to section four of the</p> <p>20 agreement.</p> <p>21 A Okay.</p> <p>22 Q 4.1?</p> <p>23 A Yeah, what this is is that in exchange for the grant by</p> <p>24 ePlus to the three patents-in-suit, SAP paid ePlus 17 and a</p> <p>25 half million dollars.</p>
<p style="text-align: right;">2625</p> <p>Farber - Direct 2625</p> <p>1 THE COURT: The patents-in-suit?</p> <p>2 THE WITNESS: Correct, the patents-in-suit.</p> <p>3 Q That is the '683, the '172, and '516 patents?</p> <p>4 A Correct, the same ones we're talking about.</p> <p>5 Q Did Ariba agree to pay any amount of money for this</p> <p>6 license agreement?</p> <p>7 A Yes.</p> <p>8 Q How much was that?</p> <p>9 A I believe it was -- let me go to that, refresh my memory</p> <p>10 exactly, but it was 37 million.</p> <p>11 Q \$37 million?</p> <p>12 A Correct.</p> <p>13 Q So in sum then, Ariba granted a license to ePlus for its</p> <p>14 patents, paid ePlus \$37 million, and in exchange, ePlus</p> <p>15 licensed the three patents that are in suit in this case; is</p> <p>16 that correct?</p> <p>17 A That's correct.</p> <p>18 Q Now, you had mentioned there were four other license</p> <p>19 agreements that ePlus has entered into with its competitors.</p> <p>20 What was the next one in time after Ariba? What was the next</p> <p>21 license that ePlus granted?</p> <p>22 A The next one would be SAP.</p> <p>23 Q And do you recall approximately what time frame that was?</p> <p>24 A Let me try to find an agreement.</p> <p>25 Q In your binder, it's at Plaintiff's Exhibit 318.</p>	<p style="text-align: right;">2627</p> <p>Farber - Direct 2627</p> <p>1 Q \$17.5 million?</p> <p>2 A That's correct.</p> <p>3 Q We've talked about the Ariba and SAP license agreements.</p> <p>4 I think you mentioned that there were three additional</p> <p>5 agreements. Can you just refresh my memory what those three</p> <p>6 agreements are?</p> <p>7 A Sure. There was Verian, it was Perfect Commerce, and</p> <p>8 SciQuest.</p> <p>9 Q Let's start with Perfect Commerce. If you could turn to</p> <p>10 Plaintiff's Exhibit 317 in your binder.</p> <p>11 A Okay.</p> <p>12 Q When did ePlus enter into a license agreement with Perfect</p> <p>13 Commerce?</p> <p>14 A That would be August 28, 2009.</p> <p>15 Q Who is Perfect Commerce?</p> <p>16 A Perfect Commerce is a company that competes with ePlus.</p> <p>17 Q And, again, can you describe for us what the subject</p> <p>18 matter was that was licensed as part of this ePlus/Perfect</p> <p>19 Commerce license agreement?</p> <p>20 A Specifically associated with the three patents that are in</p> <p>21 suit here.</p> <p>22 Q ePlus licensed the three patents-in-suit to Perfect</p> <p>23 Commerce?</p> <p>24 A That's correct.</p> <p>25 Q So that Perfect Commerce could use, sell, make, or offer</p>

<p style="text-align: right;">2628</p> <p>Farber - Direct 2628</p> <p>1 products that incorporated the technology in those three</p> <p>2 patents?</p> <p>3 A Yes, that's correct.</p> <p>4 Q And how much money, if any, did Perfect Commerce pay for</p> <p>5 the right to have a license to the ePlus patents?</p> <p>6 A Let me just make sure.</p> <p>7 Q Let me direct your attention to Exhibit A to the Perfect</p> <p>8 Commerce --</p> <p>9 A I have it.</p> <p>10 Q -- agreement.</p> <p>11 A In exchange for the patents, they paid \$750,000.</p> <p>12 Q Well, as the negotiator for ePlus, why was ePlus willing</p> <p>13 to accept \$750,000 from Perfect Commerce if ePlus -- if SAP and</p> <p>14 Ariba had agreed to pay millions of dollars more?</p> <p>15 MR. McDONALD: I object to this, Your Honor. We</p> <p>16 tried getting into the details, but there was claims of</p> <p>17 privilege, so we weren't able to inquire into all the whys and</p> <p>18 wherefores of these settlements. I don't think it's</p> <p>19 appropriate to go into them now, and also cumulative.</p> <p>20 THE COURT: It isn't cumulative, I don't think, but</p> <p>21 if in fact you claimed a privilege and foreclosed their inquiry</p> <p>22 in depositions, then you can't inquire into it because that's</p> <p>23 not been allowed.</p> <p>24 MR. STRAPP: Your Honor, I was not present when</p> <p>25 privilege was claimed --</p>	<p style="text-align: right;">2630</p> <p>Farber - Direct 2630</p> <p>1 it that ePlus agreed to license the patents to Perfect Commerce</p> <p>2 for \$750,000 if Ariba had paid 37 million and SAP had paid 17</p> <p>3 and a half million for the patents?</p> <p>4 A Well, I mean, quite simply --</p> <p>5 MR. McDONALD: I object, Your Honor, because I think</p> <p>6 he worked SAP into that question, and that is the one we were</p> <p>7 able to find --</p> <p>8 MR. STRAPP: Your Honor, I'm asking about Perfect</p> <p>9 Commerce and why ePlus, the --</p> <p>10 THE COURT: Why don't you reframe your question.</p> <p>11 MR. STRAPP: Sure.</p> <p>12 Q Mr. Farber, why was it that ePlus accepted \$750,000 for a</p> <p>13 license, to grant a license to Perfect Commerce if Ariba was</p> <p>14 willing to pay \$37 million for a license?</p> <p>15 A Well, they were a much, much smaller company for starters.</p> <p>16 Secondly, we had the opportunity during the negotiation to</p> <p>17 actually physically go to their location and audit their</p> <p>18 financials, and, you know, we had some significant concerns of</p> <p>19 them being a going concern, that they would actually stay in</p> <p>20 business over time, and we came to an amicable agreement, you</p> <p>21 know, and considered this to be a fair settlement agreement</p> <p>22 based upon what their situation was at the time as a business.</p> <p>23 Q And Perfect Commerce, again, that was a company that</p> <p>24 competed in the e-procurement software industry?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">2629</p> <p>Farber - Direct 2629</p> <p>1 THE COURT: You read the deposition, I take it, in</p> <p>2 preparation.</p> <p>3 MR. STRAPP: I did read that deposition, and I</p> <p>4 believe that we didn't make a claim of privilege with</p> <p>5 respect to --</p> <p>6 THE COURT: You did?</p> <p>7 MR. STRAPP: We did not with respect to this</p> <p>8 particular agreement.</p> <p>9 THE COURT: Mr. McDonald.</p> <p>10 MR. McDONALD: I'm looking for it.</p> <p>11 THE COURT: If they did, if you did, your objection</p> <p>12 is well-taken. If they did not, your objection is not</p> <p>13 well-taken.</p> <p>14 MR. McDONALD: What we're able to find at this point,</p> <p>15 Your Honor, is at pages 416 to 417 of Mr. Farber's testimony</p> <p>16 regarding the SAP agreement, he was asked, how did you come up</p> <p>17 with a settlement number in the case, and his answer was, I</p> <p>18 used my counsel to determine what they thought was fair, et</p> <p>19 cetera, and then we got into some privilege issues there.</p> <p>20 THE COURT: This relates to the Perfect Commerce</p> <p>21 agreement. They did the same thing. No?</p> <p>22 MR. McDONALD: Nothing specific to Perfect Commerce,</p> <p>23 Your Honor.</p> <p>24 THE COURT: All right. Objection overruled.</p> <p>25 Q Mr. Farber, let me ask you that question again. Why was</p>	<p style="text-align: right;">2631</p> <p>Farber - Direct 2631</p> <p>1 Q I think you mentioned that ePlus also granted a license to</p> <p>2 SciQuest; is that right?</p> <p>3 A That is correct.</p> <p>4 Q Can you turn to Plaintiff's Exhibit 319 in your notebook,</p> <p>5 please.</p> <p>6 A Okay.</p> <p>7 Q When did ePlus enter into a license agreement with</p> <p>8 SciQuest?</p> <p>9 A That's August 19th of 2009.</p> <p>10 Q And what was the subject matter that was granted by ePlus</p> <p>11 to SciQuest as part of this license agreement?</p> <p>12 A This, again, is the licensing of the three</p> <p>13 patents-in-suit.</p> <p>14 Q The three patents in this suit?</p> <p>15 A Yes, the '683, the '516, and '172 patent.</p> <p>16 Q And what, if anything, did SciQuest give to ePlus in</p> <p>17 exchange for a license to the three patents, same patents that</p> <p>18 are in suit in this case?</p> <p>19 A Let me check here. In exchange for the licenses that were</p> <p>20 granted by ePlus, SciQuest paid us \$2.4 million.</p> <p>21 Q And the last, I think the last license you mentioned was</p> <p>22 with a company called Verian; is that right?</p> <p>23 A Yes, that's correct.</p> <p>24 Q Who is Verian?</p> <p>25 A Verian was also and also is a competitor of ePlus in the</p>

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<p style="text-align: right;">2632</p> <p>Farber - Direct 2632</p> <p>1 market.</p> <p>2 Q And let's just take a look quickly at that license</p> <p>3 agreement. That's at Plaintiff's Exhibit 320?</p> <p>4 A Yes.</p> <p>5 Q When did ePlus enter into a license agreement with Verian?</p> <p>6 A July 7th, 2009.</p> <p>7 Q What did ePlus grant to Verian as part of this license</p> <p>8 agreement?</p> <p>9 A The same as the other licenses. We granted the three</p> <p>10 patents that have been in suit here.</p> <p>11 Q And can you tell me what, if anything, Verian agreed to</p> <p>12 pay ePlus for a right to use the patented technology?</p> <p>13 A Sure. They had an initial payment of \$500,000.</p> <p>14 Q Was there any other arrangement between the two companies</p> <p>15 for their licenses?</p> <p>16 A Yeah. We had settled on -- they were also a small</p> <p>17 company, similarly to Perfect, but we saw them more as an</p> <p>18 ongoing concern, and we agreed to associate a royalty so that</p> <p>19 when they exceeded \$15 million within a calendar year, that we</p> <p>20 would receive two and a half percent of those revenues.</p> <p>21 Q What was the reason that you felt like that was a fair and</p> <p>22 reasonable license arrangement with Verian, this royalty</p> <p>23 provision?</p> <p>24 A Why did we think it was fair?</p> <p>25 Q Yeah.</p>	<p style="text-align: right;">2634</p> <p>Farber - Direct 2634</p> <p>1 THE WITNESS: That's correct.</p> <p>2 THE COURT: And that is an award?</p> <p>3 THE WITNESS: It's a recognition award, and it's this</p> <p>4 publication, an organization that evaluates submissions and</p> <p>5 looks at how individuals or companies are using solutions.</p> <p>6 THE COURT: Excuse me.</p> <p>7 MR. McDONALD: Thank you, Your Honor. I think the</p> <p>8 sequence that we had talked about was that they first need to</p> <p>9 lay a foundation and show a connection to the patented</p> <p>10 inventions before they go into any detail about any of these</p> <p>11 awards that might be for a corporation as a whole, things like</p> <p>12 that, so I object to the question unless there's some</p> <p>13 connection specifically to the claimed invention.</p> <p>14 Q Mr. Farber, do you recall when you were here earlier in</p> <p>15 this case you talked about Procure+ and Content+?</p> <p>16 A I do.</p> <p>17 Q Are those products that are developed and sold by ePlus?</p> <p>18 A Yes.</p> <p>19 Q Are those products that ePlus believes incorporates the</p> <p>20 patented technology?</p> <p>21 A Yes.</p> <p>22 MR. McDONALD: Objection, Your Honor, lack of</p> <p>23 foundation. This witness isn't qualified to testify as to the</p> <p>24 scope of the claims or whether the products are covered by</p> <p>25 that. In fact, we tried to inquire into that in deposition and</p>
<p style="text-align: right;">2633</p> <p>Farber - Direct 2633</p> <p>1 A Well, I think it was fair to both parties. I mean, we</p> <p>2 weren't necessarily looking to, you know, press a thumb on them</p> <p>3 and put them out of business. You know, we did see them as</p> <p>4 staying in business.</p> <p>5 They didn't have the funds to pay what we thought, you</p> <p>6 know, the patents were worth at that time, but, you know, we</p> <p>7 gave them an opportunity. As they grew, then, you know, there</p> <p>8 was a percentage associated as a royalty to the patents.</p> <p>9 Q Mr. Farber, has there been any recognition in the supply</p> <p>10 chain industry for the products that ePlus sells that</p> <p>11 incorporated the patented technology?</p> <p>12 A Yes. Yes.</p> <p>13 Q What kind of recognition?</p> <p>14 A There's been industry awards, industry reports.</p> <p>15 Q And have you or your customers been recognized for any</p> <p>16 specific benefits or specific recognition for the Procure+ or</p> <p>17 Content+ products?</p> <p>18 A Yeah. Well, one of our clients recently was just awarded</p> <p>19 what's called Pros to Know which is a supply chain. We</p> <p>20 actually nominated one of our clients --</p> <p>21 THE COURT: What's it called, sir?</p> <p>22 THE WITNESS: Supply chain.</p> <p>23 THE COURT: No.</p> <p>24 THE WITNESS: Oh, pros, as in professionals, to know.</p> <p>25 THE COURT: Right, t-o, and then k-n-o-w.</p>	<p style="text-align: right;">2635</p> <p>Farber - Direct 2635</p> <p>1 weren't able to.</p> <p>2 THE COURT: You shut it down in deposition?</p> <p>3 MR. STRAPP: I never shut them down in depositions on</p> <p>4 that particular issue that I can recall.</p> <p>5 MR. McDONALD: He indicated he wasn't able to do the</p> <p>6 analysis, that the lawyers had to do it, and he couldn't.</p> <p>7 That's what I mean by that.</p> <p>8 MR. STRAPP: Let me maybe --</p> <p>9 THE COURT: He's not asserting -- what he's doing</p> <p>10 is -- what he contends, he understands the claims -- I mean the</p> <p>11 patents to be practiced in his own products; is that right?</p> <p>12 MR. STRAPP: That's correct.</p> <p>13 THE COURT: He's qualified to testify to that.</p> <p>14 MR. McDONALD: I think we need to lay a foundation,</p> <p>15 because he did say in the deposition he had to turn that over</p> <p>16 to the lawyers, Your Honor, he couldn't do it himself.</p> <p>17 MR. STRAPP: He's talking about --</p> <p>18 THE COURT: Did he or not? Did he do that?</p> <p>19 MR. ROBERTSON: Your Honor, I was at the deposition,</p> <p>20 and I don't recall that at all.</p> <p>21 THE COURT: Go over there and look at the deposition</p> <p>22 transcript. If you did that, maybe it's quitting time,</p> <p>23 Lucille.</p> <p>24 MR. STRAPP: I'll move on to a different area.</p> <p>25 MR. ROBERTSON: Wait a minute.</p>

<p style="text-align: right;">2636</p> <p>Farber - Direct 2636</p> <p>1 MR. McDONALD: Page 396, Your Honor, he said, I don't</p> <p>2 try to interpret everything back to our patented claims because</p> <p>3 I'm not a lawyer, and I don't, you know, know all the legal</p> <p>4 aspects of it.</p> <p>5 MR. ROBERTSON: Could we have the question --</p> <p>6 MR. STRAPP: Your Honor, let me read the question</p> <p>7 there. That question was, what information did you learn about</p> <p>8 the functionality of Lawson's product line from going to their</p> <p>9 website.</p> <p>10 It has absolutely nothing to do with the ePlus</p> <p>11 products. So I think -- if there's no deposition testimony</p> <p>12 that Mr. McDonald is referring to, we should be permitted to go</p> <p>13 forward.</p> <p>14 MR. McDONALD: He was saying there, I'm not a lawyer</p> <p>15 and I don't understand the legal aspects of interpretation.</p> <p>16 He's saying he's not qualified to do this construction</p> <p>17 approach. We didn't ask the question over and over again once</p> <p>18 he made the record of that.</p> <p>19 THE COURT: That was a different question.</p> <p>20 Overruled. It's not even related to this one except very</p> <p>21 marginally. This witness can testify that as far as he's</p> <p>22 concerned, the patents -- the products that he sells, that he's</p> <p>23 talking about, ePlus something, do or do not use the patents.</p> <p>24 MR. McDONALD: I also object. He hasn't laid any</p> <p>25 foundation that he's used the Court's claim constructions or</p>	<p style="text-align: right;">2638</p> <p>Farber - Direct 2638</p> <p>1 Content+ been recognized by any publications in the supply</p> <p>2 chain industry?</p> <p>3 A Yes.</p> <p>4 Q Can you give me some examples?</p> <p>5 A They were recognized by, I believe, iSource magazine and</p> <p>6 also I think we received some prior awards by supply chain,</p> <p>7 and, you know, we had awards that even go back to the</p> <p>8 ProcureNet days. The United States government gave us an award</p> <p>9 that's called the Hammer Award --</p> <p>10 MR. McDONALD: Your Honor, he's talking about</p> <p>11 ProcureNet now. There's no foundation.</p> <p>12 THE COURT: That is a different issue.</p> <p>13 MR. STRAPP: Thank you, Your Honor. I have no</p> <p>14 further questions.</p> <p>15 THE COURT: I told you, ladies and gentlemen, you're</p> <p>16 not going to be concerned with money at the end of the case.</p> <p>17 This is being offered because it has -- this evidence that he's</p> <p>18 just testified to is being offered because it's pertinent to</p> <p>19 one of the issues that are called secondary considerations that</p> <p>20 I'll tell you about later, but as a general proposition, in</p> <p>21 response to a claim that a patent is obvious in view of the</p> <p>22 prior art, the patentee can introduce evidence showing, among</p> <p>23 others things, that there has been commercial success of the</p> <p>24 patent, and that's something that you can take into account in</p> <p>25 deciding invalidity, and that's why this evidence is coming in</p>
<p style="text-align: right;">2637</p> <p>Farber - Direct 2637</p> <p>1 anything for purposes of that. His personal understanding</p> <p>2 would not establish the nexus necessary.</p> <p>3 THE COURT: He's the guy that runs the company.</p> <p>4 Q Mr. Farber, could you please state again, which of the two</p> <p>5 products you are referring to that, in your understanding,</p> <p>6 practice the patented technology of the patents-in-suit?</p> <p>7 A It's Procure+ and Content+.</p> <p>8 Q And those were the products that we saw during your</p> <p>9 testimony earlier that are marked with the patent numbers on</p> <p>10 the front of the brochures?</p> <p>11 THE COURT: Did he sell that.</p> <p>12 Q Okay. Does ePlus sell Procure+ and Content+?</p> <p>13 A Yes, we do.</p> <p>14 Q And has ePlus received any industry recognition or awards</p> <p>15 for Procure+ and Content+?</p> <p>16 A Yes, we have.</p> <p>17 Q Can you describe what some of those industry recognitions</p> <p>18 and industry awards are.</p> <p>19 A So the one that I was just previously describing from</p> <p>20 supply chain was a Pros to Know, submission that we put in for</p> <p>21 one of our clients which was Unico. They are a janitorial</p> <p>22 facility management company, and we put them in for their use</p> <p>23 of our solutions and how they use our solutions within their</p> <p>24 environment and the benefits that they've derived from that.</p> <p>25 Q And have you been recognized for your -- have Procure+ and</p>	<p style="text-align: right;">2639</p> <p>1 on this topic.</p> <p>2</p> <p>3 CROSS-EXAMINATION</p> <p>4 BY MR. McDONALD:</p> <p>5 Q Good morning Mr. Farber. Good afternoon.</p> <p>6 A It's close.</p> <p>7 Q You mentioned ProcureNet. They were the company that was</p> <p>8 the spinoff from Fisher that took these patents as part of that</p> <p>9 spinoff; is that right?</p> <p>10 MR. STRAPP: Objection. Lack of foundation, beyond</p> <p>11 the scope of the direct.</p> <p>12 THE COURT: I think he testified to it earlier.</p> <p>13 MR. STRAPP: He didn't mention Fisher, I don't think,</p> <p>14 at all.</p> <p>15 THE COURT: Not with you, but in the earlier part of</p> <p>16 his testimony.</p> <p>17 A Well, what I testified to was that ePlus acquired the</p> <p>18 assets of ProcureNet.</p> <p>19 Q Those assets included the three patents in this case;</p> <p>20 correct?</p> <p>21 A That's correct.</p> <p>22 Q And you've testified today about the money that was made</p> <p>23 in connection with these patents; right?</p> <p>24 A From the licensing perspective, yes.</p> <p>25 Q And ProcureNet, did they, as I understood it, use the</p>

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<p style="text-align: right;">2676</p> <p>Hilliard - Direct</p> <p style="text-align: right;">2676</p> <p>1 vendors from whom that buyer wants to purchase, and then to</p> <p>2 turn those requisitions into one or more purchase orders where</p> <p>3 the items on the purchase order -- and you only send one</p> <p>4 purchase order to each vendor. You wouldn't send a purchase</p> <p>5 order to a vendor that doesn't sell the item or from whom you</p> <p>6 don't want to buy the items. So where the purchase orders pick</p> <p>7 up the association of vendors from the requisition and</p> <p>8 translate that into the purchase order.</p> <p>9 The PO Writer system is simply a form-filling system.</p> <p>10 It's designed for the purchasing agent, someone in the</p> <p>11 purchasing department of the company to make the determination</p> <p>12 of who the vendor or supplier will be, not the buyer, not the</p> <p>13 one who specifies. So at every step along the way in that</p> <p>14 system, even if the buyer indicates a preferred vendor, or even</p> <p>15 if the item comes out of a catalog selected by the buyer and</p> <p>16 that catalog is associated with a vendor, by the time that item</p> <p>17 gets into the requisition, the vendor association is lost.</p> <p>18 The purchasing agent has to reenter the vendor, and then</p> <p>19 once again, once the requisition is completed, it's the</p> <p>20 purchasing agent, not the requisition, that determines what</p> <p>21 supplier the purchase order goes to. So it doesn't satisfy</p> <p>22 almost all of the claims because it loses that connection</p> <p>23 between the selection of the buyer who wanted to pick out</p> <p>24 vendors that he knows and is comfortable with and the ultimate</p> <p>25 purchase.</p>	<p style="text-align: right;">2678</p> <p>Hilliard - Direct</p> <p style="text-align: right;">2678</p> <p>1 depositions and in the prior trial, no, it does not. There are</p> <p>2 features and functions that are described in the '989 patent</p> <p>3 that were never implemented into the RIMS system, and there are</p> <p>4 RIMS system features and functions that were added that were</p> <p>5 not described in the '989 patent, and that this evolved over</p> <p>6 time. There were several versions of RIMS that evolved over a</p> <p>7 period of time starting prior to 1994 and continuing beyond</p> <p>8 1994.</p> <p>9 Q Did Lawson provide any evidence of any Fisher Scientific</p> <p>10 customer who had a RIMS system installed having all the</p> <p>11 features described in the '989 patent?</p> <p>12 A No.</p> <p>13 Q Let's turn now to the functionality of the RIMS system as</p> <p>14 described in that '989 patent, and can you just describe at a</p> <p>15 high level the functionality of that system?</p> <p>16 A Yes. The RIMS system, as described in the '989 patent, is</p> <p>17 a seller's system. It's not a buyer's system like the</p> <p>18 patents-in-suit, so it's operated by a customer service</p> <p>19 representative who is an employee of Fisher.</p> <p>20 When it's installed at a Fisher customer, according to the</p> <p>21 inventors, a Fisher customer service representative operates</p> <p>22 the Fisher RIMS system and takes requests from buyers who work</p> <p>23 for the customer and enter it into the system, but -- and then</p> <p>24 the system determines where the items that that customer wants</p> <p>25 are. They could be in a local, what's called just-in-time</p>
<p style="text-align: right;">2677</p> <p>Hilliard - Direct</p> <p style="text-align: right;">2677</p> <p>1 Q Now, I want to turn to the RIMS system, if you could. Did</p> <p>2 you review the Johnson '989 patent relating to the RIMS system</p> <p>3 that's relied upon by Lawson for its invalidity positions?</p> <p>4 A Yes, I did.</p> <p>5 Q And you indicated that you had reviewed the testimony of</p> <p>6 the Fisher Scientific inventors relating to the RIMS system?</p> <p>7 A I have.</p> <p>8 Q Did you review Ms. Eng's trial testimony from the prior</p> <p>9 trial between ePlus and SAP concerning the work that IBM did</p> <p>10 for Fisher Scientific?</p> <p>11 A Yes.</p> <p>12 Q Did you review Ms. Eng's deposition testimony in this</p> <p>13 case?</p> <p>14 A Yes, I did -- deposition testimony, yes.</p> <p>15 Q Did you review Mr. Gounaris's 's trial testimony from the</p> <p>16 prior trial between ePlus and SAP concerning IBM's work for</p> <p>17 Fisher Scientific?</p> <p>18 A I was actually in attendance for both Ms. Eng's and Mr.</p> <p>19 Gounaris's testimony, so I was there, and I've also reviewed</p> <p>20 their testimony since.</p> <p>21 Q Now, does the description of the system in the '989 patent</p> <p>22 serve to substantiate the details of any particular commercial</p> <p>23 version of the Fisher RIMS system that was allegedly publicly</p> <p>24 used prior to August of 1994?</p> <p>25 A According to the testimony of the inventors in their</p>	<p style="text-align: right;">2679</p> <p>Hilliard - Direct</p> <p style="text-align: right;">2679</p> <p>1 inventory, they could be at a distributor, the Fisher</p> <p>2 distributor's inventory, the corporate inventory. They could</p> <p>3 be something that Fisher is going to purchase from an outside</p> <p>4 vendor and then deliver and resell to the buyer.</p> <p>5 So it creates a requisition, and it completes that</p> <p>6 transaction, all done by the Fisher CSR, and it delivers the</p> <p>7 item and manages the inventory. RIMS stand for requisition and</p> <p>8 inventory management system, and that's what it is. It's a</p> <p>9 requisition and inventory management system that works from the</p> <p>10 seller's standpoint. It's a seller's system.</p> <p>11 Q Now, so you indicated that the distributor's customer</p> <p>12 service representative was the user of the RIMS system. How is</p> <p>13 that relevant to your analysis as to whether the RIMS system is</p> <p>14 an electronic sourcing system as required by the system claims</p> <p>15 at issue here?</p> <p>16 A Well, we have a construction that I have referred to and</p> <p>17 understood as to what an electronic sourcing system is, and</p> <p>18 it's a buyer's system.</p> <p>19 MS. ALBERT: Can we put the juror's glossary of claim</p> <p>20 terms up on the screen.</p> <p>21 Q And if you look about the middle of the page, has the</p> <p>22 Court construed the term electronic sourcing system?</p> <p>23 A Yes, it has.</p> <p>24 Q What is the Court's construction of that claim term?</p> <p>25 A It's an electronic system for use by a prospective buyer</p>

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<p style="text-align: right;">2680</p> <p>Hilliard - Direct 2680</p> <p>1 to locate and find items to purchase, to purchase from sources,</p> <p>2 suppliers, or vendors, and in this case, I believe sources,</p> <p>3 suppliers, and vendors are synonymous.</p> <p>4 Q And how is it relevant to the issue of whether the RIMS</p> <p>5 system satisfies the claim requirement of an electronic</p> <p>6 sourcing system, of whether or not the user of the system is</p> <p>7 the distributor's customer service representative?</p> <p>8 A The RIMS system is a seller's system. It's not for use by</p> <p>9 the prospective buyer. It's for use by the Fisher customer</p> <p>10 service representative or CSR.</p> <p>11 Q Could the RIMS system be used to purchase goods from</p> <p>12 multiple different sources, suppliers, or distributors?</p> <p>13 A No. Only from Fisher.</p> <p>14 Q Now, did the RIMS system have a database?</p> <p>15 A Yes.</p> <p>16 Q Did it have a database with records of items?</p> <p>17 A Yes.</p> <p>18 Q Do you have an opinion as to whether or not that database</p> <p>19 constitutes a database with multiple vendor catalogs?</p> <p>20 A I do have an opinion, yes.</p> <p>21 Q What is your opinion?</p> <p>22 A It does not.</p> <p>23 Q Why not?</p> <p>24 A It is not -- the items have no vendor or source</p> <p>25 association with them as a catalog item would, because all of</p>	<p style="text-align: right;">2682</p> <p>Hilliard - Direct 2682</p> <p>1 ultimately sell to the buyer, but it is not where the customer</p> <p>2 buys the item.</p> <p>3 Q Was there any way to select product catalogs to search</p> <p>4 within the RIMS system?</p> <p>5 A Well, the RIMS system doesn't have catalogs, but even if</p> <p>6 you were to construe its parts master to be a catalog, and I</p> <p>7 wouldn't construe it that way because it doesn't have -- the</p> <p>8 items aren't related to vendors, but even if you were to</p> <p>9 construe it that way, it would only have one, so you can't</p> <p>10 select which one you want from multiple, because it would only</p> <p>11 have one.</p> <p>12 Q Did the RIMS system include a search program?</p> <p>13 A No.</p> <p>14 Q Is the presence or absence of a search program relevant to</p> <p>15 any claims at issue here?</p> <p>16 A Several of the claims.</p> <p>17 MS. ALBERT: Mike, could we see the jurors' claim</p> <p>18 term glossary at page four.</p> <p>19 Q In the middle of that glossary, there's a claim element,</p> <p>20 means for searching for matching items among the selected</p> <p>21 product catalogs; do you see that?</p> <p>22 A I do.</p> <p>23 Q And what structures has the Court defined would satisfy</p> <p>24 that claim limitation?</p> <p>25 A Well, it says the materials X of this element are</p>
<p style="text-align: right;">2681</p> <p>Hilliard - Direct 2681</p> <p>1 the items in it are Fisher items that are going to be sold.</p> <p>2 There's no need for association of a vendor or a source because</p> <p>3 all items requisitioned through the RIMS system are sold to the</p> <p>4 customer from Fisher.</p> <p>5 Q Can we verify that there is no source related information</p> <p>6 in the item database by reference to the '989 patent?</p> <p>7 A Yes.</p> <p>8 Q Could we see DX-7 at table Roman numeral vi, and that's at</p> <p>9 column 39. Could you blow up there on the left-hand corner</p> <p>10 table vi. What is illustrated in this table vi?</p> <p>11 A This illustrates what's called the part master which is</p> <p>12 the listing of all of the items in the Fisher RIMS database,</p> <p>13 and the vendor or supplier is nowhere listed there. If you</p> <p>14 look at -- I've looked at every single item in the part master,</p> <p>15 and the vendor supplier isn't there. It's irrelevant because</p> <p>16 the vendor is always Fisher.</p> <p>17 Q Now, do you see about in the middle of the table there's a</p> <p>18 reference to an MFG part NBR which I interpret to mean</p> <p>19 manufacturer part number? Do you see that?</p> <p>20 A Yes, I do.</p> <p>21 Q Would that constitute vendor or source-related data?</p> <p>22 A No. That's reference information. With the Fisher RIMS</p> <p>23 system, the customer never buys from the manufacturer. The</p> <p>24 customer always buys from Fisher. This is an indication for</p> <p>25 Fisher, perhaps, where they source the item that they will</p>	<p style="text-align: right;">2683</p> <p>Hilliard - Direct 2683</p> <p>1 disclosed as search programs and modules operating on a</p> <p>2 computer system with access to the given database and their</p> <p>3 equivalents, and then it cites the columns and rows within the</p> <p>4 patent where those corresponding structures, materials, or acts</p> <p>5 are referenced.</p> <p>6 Q So if the RIMS system as described in the '989 patent does</p> <p>7 not have a search program, would that system satisfy this claim</p> <p>8 requirement?</p> <p>9 A It would -- for that reason alone, it wouldn't satisfy the</p> <p>10 claim element. It also wouldn't because it can't search among</p> <p>11 selected catalogs because you can't select a catalog.</p> <p>12 Q And this particular claim element, what claim is it</p> <p>13 relevant to?</p> <p>14 A '683, claim three.</p> <p>15 MS. ALBERT: And, Mike, if we can continue to look</p> <p>16 down further on the claim glossary, down below that, there's</p> <p>17 another element, means for searching for matching items that</p> <p>18 match the entered product information in the selected portions</p> <p>19 of the database, and that element comes from the '172 patent,</p> <p>20 claim one.</p> <p>21 Q Do you see that, Mr. Hilliard?</p> <p>22 A I do.</p> <p>23 Q What structures has the Court defined as being required in</p> <p>24 order to satisfy this claim requirement?</p> <p>25 A Once again, there's reference to the columns and rows</p>

<p style="text-align: right;">2684</p> <p>Hilliard - Direct 2684</p> <p>1 within the '172 patent that identify the specific corresponding</p> <p>2 structures, materials, or acts.</p> <p>3 Q And what is the text of the Court's definition there?</p> <p>4 A The corresponding structures, materials, or acts of this</p> <p>5 element is disclosed as search programs and modules operating</p> <p>6 on a computer system with access to data in a database or other</p> <p>7 file system and their equivalents. And as I say, it refers to</p> <p>8 the specific places within the '172.</p> <p>9 Q So if the RIMS patent as described in the '989 patent does</p> <p>10 not have any description of a search program, would that system</p> <p>11 in the '989 patent satisfy this claim requirement?</p> <p>12 A No.</p> <p>13 Q Could the RIMS system at the customer's facility build a</p> <p>14 requisition from data relating to selected matching items found</p> <p>15 in conducting searches of vendor catalogs and their associated</p> <p>16 sources?</p> <p>17 A No, it can't do that for a number of reasons. There are</p> <p>18 no catalogs, you can't select a catalog, you can't search --</p> <p>19 without a search, there are no matching items and so forth.</p> <p>20 THE COURT: Ms. Albert, how much longer do you have</p> <p>21 with this witness?</p> <p>22 MS. ALBERT: I probably have another area.</p> <p>23 THE COURT: Well, I think probably we ought to take</p> <p>24 lunch. Their lunches are here, so take your notebooks with</p> <p>25 you, please.</p>	<p style="text-align: right;">2686</p> <p>1 (The jury is present.)</p> <p>2 BY MS. ALBERT: (Continuing)</p> <p>3 Q Mr. Hilliard, before the lunch break, we were</p> <p>4 talking about the functionality of the RIMS system for</p> <p>5 building a requisition, and I had asked -- I guess</p> <p>6 I'll just ask you again. Could the RIMS system at the</p> <p>7 customer's facility build a requisition from data</p> <p>8 relating to selected matching items found in searching</p> <p>9 vendor catalogs and their associated sources?</p> <p>10 A No, it couldn't.</p> <p>11 Q Why not?</p> <p>12 A Because there's no catalog. There's no selection</p> <p>13 of catalogs. Even if you were to interpret the parts</p> <p>14 file to be a catalog, there would only be one.</p> <p>15 There's no search of the catalog. Just a part number</p> <p>16 look-up. So there would be no search results to build</p> <p>17 the requisition from.</p> <p>18 Q The RIMS system did build a requisition, though;</p> <p>19 isn't that right?</p> <p>20 A Yes, it did.</p> <p>21 MS. ALBERT: Now, can we take a look at this</p> <p>22 requisition that's built in the RIMS system. Can we</p> <p>23 look at DX 7 at table Roman numeral 3, column 37. And</p> <p>24 could you blow up, yes.</p> <p>25 Q What's illustrated in this table III?</p>
<p style="text-align: right;">2685</p> <p>Hilliard - Direct 2685</p> <p>1</p> <p>2 (Jury out.)</p> <p>3</p> <p>4 THE COURT: How many witnesses do you have after this</p> <p>5 witness, Mr. Robertson?</p> <p>6 MR. ROBERTSON: This is our last witness, Your Honor.</p> <p>7 THE COURT: Thank you. We'll have the lunch recess</p> <p>8 for an hour.</p> <p>9</p> <p>10 (Luncheon recess.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">2687</p> <p>1 A This is a requisition screen from the RIMS system.</p> <p>2 Q I'm sorry. Go ahead.</p> <p>3 A It shows the account number, which is a</p> <p>4 department, and line items.</p> <p>5 Q Now, do the line items that are listed in that</p> <p>6 requisition include information relating to the</p> <p>7 sources from which the item are to be procured?</p> <p>8 A No, there's no source information. There's only</p> <p>9 one source in the Fisher RIMS system.</p> <p>10 Q Why didn't the requisition built by the RIMS</p> <p>11 system need to include vendor information?</p> <p>12 A There's only one vendor.</p> <p>13 Q Does the electronic sourcing system of the ePlus</p> <p>14 patents require that the requisition line items have</p> <p>15 associated source or vendor information?</p> <p>16 A Yes.</p> <p>17 Q Why is that necessary?</p> <p>18 A Well, because in the patents-in-suit they call for</p> <p>19 the ability of the buyer to go through catalogs and to</p> <p>20 select the sources from which he or she wants to buy.</p> <p>21 And so the requisition needs to reflect the sources</p> <p>22 that are selected or vendors - source and vendor I'm</p> <p>23 using interchangeably - that the buyer has selected.</p> <p>24 Q Then does the system take that requisition and</p> <p>25 need to be able to generate purchase orders using the</p>

<p style="text-align: right;">2688</p> <p>1 data in that requisition?</p> <p>2 A Yes. The '683 patent, Claim Three, and many of</p> <p>3 the other claims all talk about generating multiple</p> <p>4 purchase orders from the requisition, and the reason</p> <p>5 for multiple purchase orders is that the individual</p> <p>6 line items in the requisition are each associated with</p> <p>7 vendors, and you have to have a separate purchase</p> <p>8 order for each vendor.</p> <p>9 Q So is it necessary to the functionality of being</p> <p>10 able to process that requisition to generate purchase</p> <p>11 orders, is it necessary to have requisitions with</p> <p>12 associated vendor information?</p> <p>13 A Yes, otherwise you wouldn't know what vendors to</p> <p>14 issue the purchase orders to. Or the system wouldn't</p> <p>15 know, pardon me.</p> <p>16 Q Did the RIMS system generate a purchase order from</p> <p>17 a requisition?</p> <p>18 A The RIMS system generated a purchase order block</p> <p>19 at the RIMS system, which is the on-site system</p> <p>20 operated by the Fisher customer service rep or CSR,</p> <p>21 and that purchase order block then went to the Fisher</p> <p>22 warehouse where a purchase order could conceivably be</p> <p>23 generated, but it would be generated with manual</p> <p>24 intervention.</p> <p>25 Q Can we look at some figures in the '989 patent</p>	<p style="text-align: right;">2690</p> <p>1 MR. McDONALD: That the deposition -- if it's</p> <p>2 not in the report. That's the question. Moreover,</p> <p>3 Mr. Hilliard is a rebuttal expert. As a rebuttal, he</p> <p>4 wasn't allowed to have another rebuttal report in the</p> <p>5 form of his deposition. That was something that was</p> <p>6 discussed by the parties -- the party that had the</p> <p>7 burden of proof with the first expert report, but you</p> <p>8 have already ruled that we have to have them in the</p> <p>9 reports anyway.</p> <p>10 MS. ALBERT: Now we're backtracking on a</p> <p>11 stipulation that Mr. McDonald provided to us earlier</p> <p>12 in the case.</p> <p>13 THE COURT: I remember this coming up.</p> <p>14 MS. ALBERT: I believe it came up in the</p> <p>15 course of another hearing with Your Honor where Mr.</p> <p>16 McDonald did stipulate.</p> <p>17 THE COURT: Go to my desk, please, and bring</p> <p>18 me the transcript that is -- it may be in your office.</p> <p>19 It's the transcript of the August 10 hearing that I'm</p> <p>20 using for the opinion.</p> <p>21 MS. ALBERT: I think we might have a copy.</p> <p>22 MR. McDONALD: This actually came up in the</p> <p>23 hearing yesterday morning, the issue of whether the</p> <p>24 experts' deposition could be used to supplement their</p> <p>25 reports, and I think you ruled that we couldn't rely</p>
<p style="text-align: right;">2689</p> <p>1 that concern this purchase order functionality? And</p> <p>2 if we could look at DX 7 at figure 5A.</p> <p>3 Can you explain, Mr. Hilliard, what happens in the</p> <p>4 system after the CSR accepts the requisition and when</p> <p>5 you reach the decision block labeled 332 there?</p> <p>6 A Yes. Can we blow up this section? Yes, a</p> <p>7 decision block shows that -- the diamond refers to a</p> <p>8 decision. So there's a question as to whether the</p> <p>9 item on the requisition is of type 1, 3 or 4.</p> <p>10 MR. McDONALD: Your Honor, I object. This is</p> <p>11 outside the scope of Mr. Hilliard's report.</p> <p>12 MS. ALBERT: Your Honor --</p> <p>13 THE COURT: I don't have Mr. Hilliard's</p> <p>14 report here. Does somebody have it for me so I can</p> <p>15 see where it is?</p> <p>16 MS. ALBERT: Your Honor, Mr. Hilliard was</p> <p>17 questioned at length about this figure in the course</p> <p>18 of his deposition, and we have a stipulation with Mr.</p> <p>19 McDonald that the experts can testify concerning</p> <p>20 opinions that were elicited from them in the course of</p> <p>21 the deposition.</p> <p>22 MR. McDONALD: We have talked about that.</p> <p>23 That's not the case. That was for the initial --</p> <p>24 THE COURT: I didn't hear you. Talk about it</p> <p>25 and what? We have talked about it and what?</p>	<p style="text-align: right;">2691</p> <p>1 on the deposition testimony.</p> <p>2 THE COURT: There was nobody talking about a</p> <p>3 stipulation that you had agreed to do that yesterday</p> <p>4 morning. I'm not quite sure exactly how it came up,</p> <p>5 but I gathered that as to Dr. Hilliard there's a</p> <p>6 stipulation, and I didn't understand there was as to</p> <p>7 Dr. Shamos.</p> <p>8 MS. ALBERT: This came up in the course of</p> <p>9 the August 10 hearing before Your Honor, and if I can</p> <p>10 refer you to page 3, starting at line 24, Mr. Merritt</p> <p>11 said, "as a consequence the" --</p> <p>12 THE COURT: Let me read it.</p> <p>13 MS. ALBERT: Okay.</p> <p>14 THE COURT: Look at 4, page 4, line 13 to the</p> <p>15 bottom.</p> <p>16 MR. McDONALD: That shows that actually</p> <p>17 Mr. --</p> <p>18 THE COURT: And in addition to that, it's</p> <p>19 that last line, 24, and carrying over to the top of</p> <p>20 page 5, number 4, that was involved yesterday morning.</p> <p>21 It wasn't in the report to begin with, the original</p> <p>22 report. That was what this was. And the same rule</p> <p>23 would apply here.</p> <p>24 If there's a deficiency in the original</p> <p>25 report such as there was with respect to what we were</p>

<p style="text-align: right;">2692</p> <p>1 talking about yesterday with Dr. Shamos, then the same</p> <p>2 rule applies here. But if the stipulation is that all</p> <p>3 he's doing is -- if he's testifying to some point that</p> <p>4 was in his original report but that was augmented</p> <p>5 because he was rebutting whatever Dr. Shamos did, then</p> <p>6 that would be the situation that would be covered by</p> <p>7 the stipulation.</p> <p>8 MR. McDONALD: Here's the situation. That</p> <p>9 only goes to the expert that did the first round of</p> <p>10 reports because Dr. Shamos went first. Mr. Hilliard</p> <p>11 then rebutted him. Then the issue was: Does</p> <p>12 Mr. Shamos do another report or can we just rely on</p> <p>13 his deposition. There was no issue that the second</p> <p>14 expert after already rebutting the first expert would</p> <p>15 also rebut him at his deposition. So Mr. Hilliard as</p> <p>16 the second expert, there was no stipulation regarding</p> <p>17 the second expert.</p> <p>18 THE COURT: You said that a lot better than I</p> <p>19 did.</p> <p>20 MS. ALBERT: Your Honor, Mr. Hilliard treated</p> <p>21 the issue of purchase order generation at length in</p> <p>22 his report.</p> <p>23 THE COURT: Just give me the report and let</p> <p>24 me see it. The challenge is it isn't in his report.</p> <p>25 MR. ROBERTSON: I believe it's in the binder</p>	<p style="text-align: right;">2694</p> <p>1 to figure 5A.</p> <p>2 THE COURT: Figure 5A is the one he's</p> <p>3 testifying about?</p> <p>4 MS. ALBERT: That's correct, Your Honor.</p> <p>5 THE COURT: Well --</p> <p>6 MR. McDONALD: That's actual in figure 5B,</p> <p>7 Your Honor.</p> <p>8 THE COURT: Ms. Albert, is it 5A or 5B?</p> <p>9 MS. ALBERT: I think 5B is a continuation of</p> <p>10 figure 5A. These specific quotations might be.</p> <p>11 THE COURT: All right. Anything else?</p> <p>12 MS. ALBERT: That's all I connote at this</p> <p>13 current time.</p> <p>14 THE COURT: This is the hour of decision.</p> <p>15 All right. Anything else, Mr. McDonald?</p> <p>16 MR. McDONALD: No, Your Honor.</p> <p>17 THE COURT: It looks to me like in paragraphs</p> <p>18 81 through 83 and in 72, he is covering in fair detail</p> <p>19 the very topic he's addressing now. And while he may</p> <p>20 not have cited a specific figure in his report, he's</p> <p>21 doing everything but citing the figure in his report.</p> <p>22 So I overrule the objection to the testimony.</p> <p>23 MS. ALBERT: Thank you, Your Honor.</p> <p>24 BY MS. ALBERT:</p> <p>25 Q So I think the pending question was could you</p>
<p style="text-align: right;">2693</p> <p>1 you have, Your Honor.</p> <p>2 THE COURT: Page?</p> <p>3 MS. ALBERT: Page 30 at paragraph 72.</p> <p>4 THE COURT: What is the supplemental?</p> <p>5 MS. ALBERT: Is the objection that Mr.</p> <p>6 McDonald is raising is that this specific figure was</p> <p>7 not referenced in his report?</p> <p>8 MR. McDONALD: That's right.</p> <p>9 MS. ALBERT: I think he discusses the</p> <p>10 functionality of this figure at length in his report.</p> <p>11 THE COURT: Let me see the paragraph and page</p> <p>12 you're talking about.</p> <p>13 MS. ALBERT: I'm referring to paragraph 72 as</p> <p>14 one paragraph.</p> <p>15 THE COURT: Hold on. I can't read but one at</p> <p>16 a time. You-all are all smarter than I am. I can</p> <p>17 only do it one at a time.</p> <p>18 MS. ALBERT: Then I would also refer Your</p> <p>19 Honor to paragraphs 81 through 83.</p> <p>20 MR. McDONALD: Your Honor, could we have the</p> <p>21 figure removed from the screen while you're reading?</p> <p>22 THE COURT: Sure.</p> <p>23 MS. ALBERT: Specifically, with reference to</p> <p>24 paragraph 82, the quotations from the patent that are</p> <p>25 referenced in that paragraph are specifically directed</p>	<p style="text-align: right;">2695</p> <p>1 explain what happens in the RIMS system after the CSR</p> <p>2 accepts a requisition and at the point where you reach</p> <p>3 the decision block 332?</p> <p>4 A Yes. The diamond-shaped block indicates that</p> <p>5 there's a logic decision that's made by the Fisher</p> <p>6 RIMS system to determine whether the item that's being</p> <p>7 requisitioned is a type 1 item, which is a</p> <p>8 distributor-owned item that's located at the Just In</p> <p>9 Time location at the customer's site, a type 3 item,</p> <p>10 which is a distributor-owned item that's located at</p> <p>11 the warehouse, or a type 4 item, which is an item that</p> <p>12 the distributor buys and resells to the customer.</p> <p>13 If so, the system creates a purchase order data</p> <p>14 block, as I mentioned in response to your prior</p> <p>15 question, over here on the right. And if not, the</p> <p>16 system generates what's called a customer internal</p> <p>17 P.O., although that internal P.O. is really not a</p> <p>18 purchase order. It's a material transfer request.</p> <p>19 Q What's the difference between a material transfer</p> <p>20 request and a purchase order?</p> <p>21 A In a purchase order something is going to be</p> <p>22 purchased as is the case with the type 1, 3 or 4. The</p> <p>23 other types that are active are the 5 and 6. Five</p> <p>24 being an item that's not handled by the system and 6</p> <p>25 being a -- so I'm going to ignore 5 for a moment. Six</p>

<p style="text-align: right;">2696</p> <p>1 being a customer-owned item that's located at the Just</p> <p>2 In Time warehouse at the customer's location.</p> <p>3 Now, in the case of that type 6, since it's a</p> <p>4 customer-owned item, there is no purchase. The</p> <p>5 customer doesn't need to purchase that item because</p> <p>6 the customer already owns that item. So this is</p> <p>7 really a material transfer, not a purchase. Although,</p> <p>8 there's a reason, I believe, why it's called that in</p> <p>9 this patent.</p> <p>10 Q Does this diagram show the RIMS system generating</p> <p>11 multiple purchase orders from a single requisition?</p> <p>12 A No, it does not. It shows on the right-hand side</p> <p>13 a purchase order block, which is sent to the host</p> <p>14 system, and the left-hand side the initiation of</p> <p>15 basically a material transfer that transfers the</p> <p>16 customer's own inventory from one department to</p> <p>17 another. No purchase or sale occurs.</p> <p>18 Q Now, I want to turn to the converting</p> <p>19 functionality that's required by some of the claims.</p> <p>20 Is there any description in the '989 patent of using</p> <p>21 the RIMS system to convert a selected matching item</p> <p>22 associated with one vendor to another item from a</p> <p>23 different vendor by means of cross referencing</p> <p>24 functionality?</p> <p>25 A No, there isn't.</p>	<p style="text-align: right;">2698</p> <p>1 result of -- that's found as a result of a search,</p> <p>2 something that the patent refers to as a hit.</p> <p>3 MR. McDONALD: Your Honor, I object. The</p> <p>4 Court has defined the term "matching item," and you</p> <p>5 did want use the word "hit."</p> <p>6 Q Why don't we look at the Court's construction.</p> <p>7 MS. ALBERT: I want to go back, Mike, to the</p> <p>8 first page, and I want to blow up the second to the</p> <p>9 last item there; selected matching items.</p> <p>10 Q What's the Court's construction for selected</p> <p>11 matching items?</p> <p>12 A These are requisition items.</p> <p>13 Q So could we go back to Claim Three for a moment,</p> <p>14 please? So with respect to this means for converting</p> <p>15 data requirement, does that relate to requisition</p> <p>16 items and an associated source?</p> <p>17 A No, there's no associated source. There's only</p> <p>18 one source. There's only one vendor. And there's no</p> <p>19 different source because, once again, there's only one</p> <p>20 vendor.</p> <p>21 Q So would the RIMS system satisfy that claim</p> <p>22 requirement?</p> <p>23 A No.</p> <p>24 Q We saw earlier the requisitions that are actually</p> <p>25 built by the RIMS system. Did those requisitions</p>
<p style="text-align: right;">2697</p> <p>1 Q What about the cross reference tables at the</p> <p>2 Fisher mainframe computer. Would those satisfy the</p> <p>3 claim requirements?</p> <p>4 A No, they don't. The cross reference tables are</p> <p>5 basically a table that's in there for the purpose of</p> <p>6 allowing Fisher to supply a Fisher item in place of an</p> <p>7 item that has a competitor's product number. There's</p> <p>8 no alternative vendor. The only vendor to the</p> <p>9 customer is Fisher. So you can't -- the system</p> <p>10 doesn't provide for the conversion of an item from one</p> <p>11 vendor to another vendor because -- to include the</p> <p>12 item of another vendor because it's all one vendor.</p> <p>13 MS. ALBERT: Mike, could we take a look at</p> <p>14 Claim Three of the '683 patent?</p> <p>15 Q You see at the bottom there there's this claim</p> <p>16 element means for converting data relating to a</p> <p>17 selected matching item and an associated source to</p> <p>18 data relating to an item in a different source? Do</p> <p>19 you see that?</p> <p>20 A Yes.</p> <p>21 Q Has the Court construed the meaning of the term</p> <p>22 "selected matching item"?</p> <p>23 A Yes, it has.</p> <p>24 Q Do you know what that construction is?</p> <p>25 A A selected matching item is an item that is the</p>	<p style="text-align: right;">2699</p> <p>1 contain associated source related information?</p> <p>2 A No, they did not.</p> <p>3 Q Did the RIMS system employ a catalog selection</p> <p>4 protocol where the system can select a subset of a</p> <p>5 collection of catalogs where the subset has a catalog</p> <p>6 of a first vendor and a catalog of either a second</p> <p>7 competing vendor or a manufacturer?</p> <p>8 A No, it did not.</p> <p>9 Q Why not?</p> <p>10 A There's no catalog. And even if you were to</p> <p>11 interpret the product list as being a catalog, there</p> <p>12 would only be one. So you can't select from one.</p> <p>13 There's only one vendor.</p> <p>14 Q Now, with reference to this catalog selection</p> <p>15 protocol, could we take a look at Claim One of the</p> <p>16 '516 patent? Is this catalog selection protocol</p> <p>17 requirement relevant to Claim One of the '516 patent?</p> <p>18 A Yes. The fourth element in the '516 patent is a</p> <p>19 catalog selection protocol.</p> <p>20 Q And you said that in your opinion, the RIMS system</p> <p>21 does not employ such a protocol?</p> <p>22 A There's nothing in the RIMS system anywhere in the</p> <p>23 '989 patent that even approaches anything like that.</p> <p>24 Q Could we take a look at Claim 29 of the '516</p> <p>25 patent?</p>

<p style="text-align: right;">2700</p> <p>1 Is the catalog selection protocol requirement</p> <p>2 relevant to Claim 29?</p> <p>3 A Yes, it is. Once again, it's the fourth element.</p> <p>4 The fourth, yeah, element.</p> <p>5 Q Now, with respect to inventory capability, could</p> <p>6 the RIMS system determine the availability of a</p> <p>7 selected matching item in inventory?</p> <p>8 A As I understand it, inventory refers to a third</p> <p>9 party vendor's inventory. And there's nothing in the</p> <p>10 RIMS system --</p> <p>11 MR. McDONALD: Objection, Your Honor. The</p> <p>12 term "inventory" is not construed by the Court as</p> <p>13 limited to third party inventory.</p> <p>14 MS. ALBERT: Can I take a look at Claim 26 of</p> <p>15 the '683 patent?</p> <p>16 THE COURT: Is "inventory" a construed term?</p> <p>17 MS. ALBERT: No, it wasn't. So I think he</p> <p>18 could give his opinion from the perspective of a</p> <p>19 person of ordinary skill in the art, how a person of</p> <p>20 ordinary skill in the art from review of the ePlus</p> <p>21 patent specification would understand the meaning of</p> <p>22 that term as it's used in the claim with reference to</p> <p>23 the claim as a whole.</p> <p>24 MR. McDONALD: Well, if they wanted a special</p> <p>25 meaning, Your Honor, that's what they should have</p>	<p style="text-align: right;">2702</p> <p>1 building a requisition using data relating to selected</p> <p>2 matching items and their associated sources?</p> <p>3 A Yes, at this time does.</p> <p>4 Q And what are the sources that are associated with</p> <p>5 those selected matching items in the requisition?</p> <p>6 A Those sources are the catalogs of vendors from</p> <p>7 whom the customer -- multiple vendors from whom the</p> <p>8 customer is potentially going to buy.</p> <p>9 Q Did the RIMS system have catalogs associated with</p> <p>10 vendors?</p> <p>11 A No.</p> <p>12 Q Did the RIMS system build a requisition using data</p> <p>13 relating to selected matching items and their</p> <p>14 associated sources?</p> <p>15 A No.</p> <p>16 Q So do you have an understanding then that the</p> <p>17 selected matching item relates back to the vendor</p> <p>18 product catalogs if you follow back through the claim?</p> <p>19 A I think that's quite clear.</p> <p>20 Q The '989 patent does use the term "sourcing," is</p> <p>21 that right?</p> <p>22 A Yes, it does. And it defines it right in the</p> <p>23 description.</p> <p>24 Q How is the reference to sourcing used in</p> <p>25 connection with the '989 patent?</p>
<p style="text-align: right;">2701</p> <p>1 asked you to give it. The word "inventory" has a</p> <p>2 meaning. If he wants to say what "inventory" means as</p> <p>3 he would understand it or one of ordinary skill,</p> <p>4 that's one thing. But to say it's a specific party's</p> <p>5 inventory, well, that's adding additional words to it,</p> <p>6 and that's a whole different thing. He shouldn't be</p> <p>7 allowed do that.</p> <p>8 MS. ALBERT: Maybe I can just walk him</p> <p>9 through the claim.</p> <p>10 THE COURT: Maybe that would be a better</p> <p>11 approach.</p> <p>12 BY MS. ALBERT:</p> <p>13 Q Now, do you see this inventory functionality</p> <p>14 referenced in the last element of Claim 26?</p> <p>15 A Yes.</p> <p>16 Q Do we also see a reference to a selected matching</p> <p>17 item?</p> <p>18 A Yes.</p> <p>19 Q Earlier we referred to the Court's claim term</p> <p>20 glossary and its construction of "selected matching</p> <p>21 item." What was that construction?</p> <p>22 A A selected matching item is an item in a</p> <p>23 requisition.</p> <p>24 Q Does that selected matching item refer back then</p> <p>25 to the fourth element in the claim that relates to</p>	<p style="text-align: right;">2703</p> <p>1 A It's used in an entirely different way than</p> <p>2 sourcing is used in the patents-in-suit. The</p> <p>3 patents-in-suit are customer purchase purchasing</p> <p>4 systems. The '989 is a buyer, a selling system.</p> <p>5 Sourcing is defined right in the '989 patent.</p> <p>6 MR. McDONALD: Your Honor, I object. He's</p> <p>7 referred to the RIMS patent as opposed to the</p> <p>8 patent-in-suit. I think it's already been shown the</p> <p>9 RIMS patent is part of the patents-in-suit, and he's</p> <p>10 using a definition from the RIMS patent as part of the</p> <p>11 patents-in-suit as if it's not part of the</p> <p>12 patents-in-suit. I object to his interpretation.</p> <p>13 THE COURT: I think that's one of your</p> <p>14 arguments, but I'm not sure that's been definitively</p> <p>15 determined. So I think he's entitled to say what he</p> <p>16 has to say on the topic. Objection is overruled.</p> <p>17 MS. ALBERT: Thank you, Your Honor.</p> <p>18 THE COURT: But you better start over again</p> <p>19 with the question. You still have your objection to</p> <p>20 it, Mr. McDonald.</p> <p>21 BY MS. ALBERT:</p> <p>22 Q How is the term "sourcing" used in connection with</p> <p>23 the RIMS system described in the '989 patent?</p> <p>24 A There's a section on sourcing in the '989 patent</p> <p>25 beginning on in column 11. And the first paragraph</p>

<p style="text-align: right;">2704</p> <p>1 shows a definition of sourcing. Sourcing the</p> <p>2 requisition is the process of determining what</p> <p>3 inventory will be used to fill requisition.</p> <p>4 And in the case of the '989 patent, this</p> <p>5 definition of "sourcing" is different than the</p> <p>6 definition of "sourcing" in the patents-in-suit, and</p> <p>7 the reason it's different is because the '989 patent</p> <p>8 is a seller's system and the patents-in-suit is a</p> <p>9 buyer's system. So you can't look at the word in the</p> <p>10 two patents and say they mean the same thing or the</p> <p>11 combination of patents-in-suit versus the '989 because</p> <p>12 sourcing is clearly defined differently in the '989</p> <p>13 than sourcing is used in the connotation of an</p> <p>14 electronic sourcing system.</p> <p>15 Q Now, Mr. Hilliard, do you have a slide that</p> <p>16 summarizes what you consider to be the major</p> <p>17 differences between the RIMS system and the electronic</p> <p>18 sourcing system of the asserted claims?</p> <p>19 A Yes.</p> <p>20 MS. ALBERT: Could we have slide 51 from</p> <p>21 slide deck 93.</p> <p>22 Q What have you summarized here?</p> <p>23 A This is basically a summary of the characteristics</p> <p>24 of the Fisher or of the RIMS system, the requisition</p> <p>25 and inventory management system. And in summarizing</p>	<p style="text-align: right;">2706</p> <p>1 for the selected matching items because there are no</p> <p>2 selected matching items for all the preceding reasons.</p> <p>3 Q Now, let's turn to the TV/2 search program.</p> <p>4 A Okay.</p> <p>5 Q Does Lawson contend that the TV/2 search program</p> <p>6 fully anticipates any of the patent claims?</p> <p>7 A I don't believe so, no.</p> <p>8 Q Did the inventors disclose brochures relating to</p> <p>9 the TV/2 search program to the Patent Office for</p> <p>10 consideration during the prosecution of the</p> <p>11 application which led to the patents-in-suit?</p> <p>12 A Yes.</p> <p>13 Q Can we confirm that by looking at one of the</p> <p>14 patents? Let's take a look at PX 1 on the cover page</p> <p>15 under "other publications." Do you see some</p> <p>16 documentation relating to the TV/2 search program</p> <p>17 there?</p> <p>18 A Yes, there's the item referred to as a general</p> <p>19 information manual, which does have a date, and then</p> <p>20 there's an item referred to as a product information</p> <p>21 brochure.</p> <p>22 When I used to work for computer companies, that's</p> <p>23 what we called a product slick or a product brief, and</p> <p>24 that one is undated.</p> <p>25 Q Let's take a look, if we could, at the general</p>
<p style="text-align: right;">2705</p> <p>1 it, would you like me to go through the bullet points?</p> <p>2 Q Yes. So does this slide set forth what you</p> <p>3 consider to be the differences between the RIMS system</p> <p>4 and the '989 patent and the requirements of the claims</p> <p>5 of the patents-in-suit?</p> <p>6 A Yes.</p> <p>7 Q Could you briefly summarize what you consider to</p> <p>8 be those distinctions?</p> <p>9 A Yes. The patents-in-suit describe an electronic</p> <p>10 sourcing system. Sourcing being defined as</p> <p>11 purchasing. Whereas, the RIMS system is an inventory</p> <p>12 management system. There are no product catalogs in</p> <p>13 the RIMS system. And even if you were to interpret,</p> <p>14 as I've said before, the product list as a catalog, it</p> <p>15 would be a single catalog rather than multiple.</p> <p>16 You can't select product catalogs to search</p> <p>17 because at most, and I don't agree with that</p> <p>18 interpretation, but at months, if you took that</p> <p>19 interpretation, there would be one.</p> <p>20 There's no search capability in RIMS. RIMS has</p> <p>21 strictly a product lookup by product number. And then</p> <p>22 there's no cross-reference table that links like items</p> <p>23 from multiple vendors because in RIMS there's only one</p> <p>24 vendor. And there's no means of processing a</p> <p>25 requisition to generate one or more purchase orders</p>	<p style="text-align: right;">2707</p> <p>1 information manual that was disclosed to the Patent</p> <p>2 Office. I think that's DX 105.</p> <p>3 Did you review this IBM general information</p> <p>4 manual?</p> <p>5 A Yes, I did.</p> <p>6 Q Does it provide a sufficient description of the</p> <p>7 TV/2 search program such as a person of ordinary skill</p> <p>8 in the art would be able to make and use that search</p> <p>9 program?</p> <p>10 A No, it's only about six or seven pages long.</p> <p>11 Eight, I believe, including a blank page. And it</p> <p>12 doesn't have any detail in it at all. Although it's</p> <p>13 referred to as a manual, it's really more of a</p> <p>14 brochure. There's no descriptive information that</p> <p>15 would allow someone who was looking at it to</p> <p>16 understand how the TV/2 system was built or works.</p> <p>17 Nothing that would enable one of ordinary skill in the</p> <p>18 art to create a similar product or even to use this</p> <p>19 product if they had it. There's no technical detail</p> <p>20 whatsoever.</p> <p>21 Q Did you review any deposition testimony of the IBM</p> <p>22 witnesses concerning the level of technical detail</p> <p>23 contained in this general information manual?</p> <p>24 A I did.</p> <p>25 Q Who testified about that?</p>

<p style="text-align: right;">2708</p> <p>1 A I believe both Mr. Gounaris and Ms. Eng testified</p> <p>2 that it really was more of a marketing --</p> <p>3 MR. McDONALD: Objection, Your Honor. I</p> <p>4 don't think he should be characterizing people's</p> <p>5 testimonial.</p> <p>6 MS. ALBERT: This was in the deposition</p> <p>7 testimony that he reviewed to form the basis of his</p> <p>8 opinions.</p> <p>9 THE COURT: Well, then I think you need to</p> <p>10 make that clear. He can consider these things as the</p> <p>11 basis of his opinion, but Mr. Gounaris and Ms. Eng</p> <p>12 testified at trial, and what Mr. McDonald is pointing</p> <p>13 out is that it sounds like he's saying what they</p> <p>14 testified to at trial. And whatever they said at</p> <p>15 trial, they said, and the jury will remember, but if</p> <p>16 there's literature that he considered in forming his</p> <p>17 opinion that's of the type that an expert ordinarily</p> <p>18 considers, which all of you have used the depositions</p> <p>19 to do in this case, then he can say that he relied on</p> <p>20 that in reaching his judgment. Do you see the</p> <p>21 difference?</p> <p>22 MS. ALBERT: Yes. I believe my original</p> <p>23 question was directed specifically to the deposition</p> <p>24 testimony and not to any trial testimony.</p> <p>25 THE COURT: It may have been.</p>	<p style="text-align: right;">2710</p> <p>1 of ordinary skill in the art.</p> <p>2 Q Let's take a look at the other IBM document that</p> <p>3 the inventors disclosed to the Patent Office. Could</p> <p>4 we take a look at DX 107.</p> <p>5 Did you review this IBM TV/2 brochure in</p> <p>6 formulating your opinions?</p> <p>7 A Yes. I did.</p> <p>8 Q Does this TV/2 brochure provide sufficient</p> <p>9 description of the TV/2 search program such that a</p> <p>10 person of ordinary skill in the art would be able to</p> <p>11 make and use that search program?</p> <p>12 A No. This is, as I stated in my deposition and in</p> <p>13 my report, this is basically a marketing piece that</p> <p>14 has bullet points that are largely puff or appear to</p> <p>15 be largely puff and really provide no technical detail</p> <p>16 and certainly don't provide any information that would</p> <p>17 allow one of ordinary skill to make or use a technical</p> <p>18 viewer or a search product like TV/2 purports to be.</p> <p>19 Q What type of documentation would a person of</p> <p>20 ordinary skill in the art need to make a system that</p> <p>21 would implement the TV/2 search program?</p> <p>22 A A technical design manual, a user's manual,</p> <p>23 perhaps product coding, listings of the code, and</p> <p>24 technical manuals, basically, is what it would take</p> <p>25 for one of ordinary skill in the art and neither of</p>
<p style="text-align: right;">2709</p> <p>1 BY MS. ALBERT:</p> <p>2 Q Did you --</p> <p>3 THE COURT: So the objection is overruled,</p> <p>4 but just in order that you'll straighten out that</p> <p>5 which Mr. McDonald and I messed up, will you do it</p> <p>6 over again? Maybe I'll just take the blame. It</p> <p>7 wasn't him.</p> <p>8 BY MS. ALBERT:</p> <p>9 Q Did you review any deposition testimony from any</p> <p>10 IBM witnesses in formulating your opinions with</p> <p>11 respect to the teachings of the IBM documentation?</p> <p>12 A I did.</p> <p>13 Q Is that deposition testimony the type that an</p> <p>14 expert would reasonably rely upon in formulating</p> <p>15 opinions as far as teachings of alleged prior art</p> <p>16 documentation?</p> <p>17 A Well, it's something that I would consider and be</p> <p>18 part of what I would rely on. I also, since I develop</p> <p>19 documentation of this type, I would also rely on my</p> <p>20 own knowledge of this type of documentation, but</p> <p>21 certainly I considered that, and I considered it to be</p> <p>22 important, and I found that it concurred -- that their</p> <p>23 characterization of it concurred with my own judgment,</p> <p>24 that this was not a technical document or nothing that</p> <p>25 would give enough detail that would be enabling to one</p>	<p style="text-align: right;">2711</p> <p>1 these items fit that characterization.</p> <p>2 Q Have you reviewed any evidence that would</p> <p>3 substantiate whether or not IBM had ever had a</p> <p>4 commercial version of the TV/2 search program prior to</p> <p>5 IBM's work with the inventors on the electronic</p> <p>6 sourcing system project?</p> <p>7 A There was no evidence at all to that effect.</p> <p>8 Q Now, can you describe at a high level the nature</p> <p>9 of this Technical Viewer/2 search program?</p> <p>10 A Yes. It's a piece of software that allows the</p> <p>11 user or buyer to search through electronic information</p> <p>12 to find information that's included in that electronic</p> <p>13 document and to view the items that were found as a</p> <p>14 result of the search.</p> <p>15 Q Was TV/2 an electronic sourcing system?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A It doesn't have any of the characteristics of an</p> <p>19 electronic sourcing system. There's no -- well, can</p> <p>20 we put up the construction?</p> <p>21 Q Well, sure.</p> <p>22 MS. ALBERT: Can we look at the glossary of</p> <p>23 claim terms. Blow up that middle one, electronic</p> <p>24 sourcing system.</p> <p>25 Q So what characteristics are missing from the TV/2</p>

<p style="text-align: right;">2712</p> <p>1 program that are required in order to constitute an</p> <p>2 electronic sourcing system?</p> <p>3 A An ability to complete the process described in</p> <p>4 that description. You can find items, but there is no</p> <p>5 purchasing capability from sources, suppliers or</p> <p>6 vendors. There's nothing relating to sources,</p> <p>7 suppliers or vendors at all in the TV/2 system.</p> <p>8 Q Did the TV/2 program prior to 1994 include any</p> <p>9 product catalogs in its database?</p> <p>10 A No, it didn't come with a database.</p> <p>11 Q Did TV/2 prior to August of 1994 have multiple</p> <p>12 product catalogs?</p> <p>13 A No.</p> <p>14 Q Was there any capability using TV/2 to search for</p> <p>15 items and build a requisition using those search</p> <p>16 results?</p> <p>17 A No, there's no requisition logic in TV/2 at all.</p> <p>18 It's simply a search and display engine.</p> <p>19 Q Could we take a look at DX 107, and the Bates</p> <p>20 number on the page I would like to refer you to is</p> <p>21 G33.</p> <p>22 MS. ALBERT: Could we blow up the left-hand</p> <p>23 column there?</p> <p>24 Q Under some of the possibilities, we see some</p> <p>25 potential uses include -- and about three bullet</p>	<p style="text-align: right;">2714</p> <p>1 into the electronic sourcing system of</p> <p>2 Fisher-Scientific?</p> <p>3 A Yes. Fisher engaged IBM to undertake a project to</p> <p>4 modify TV/2 to work with software Fisher was</p> <p>5 developing that ultimately became something called</p> <p>6 Supplylink or Cornerstone. And that involved</p> <p>7 significant modifications to TV/2, which both</p> <p>8 Mr. Gounaris and Ms. Eng described in their deposition</p> <p>9 testimony and in their trial testimony in the SAP</p> <p>10 trial.</p> <p>11 Q Now, I would like to turn to your opinions with</p> <p>12 respect to each of the asserted claims and Lawson's</p> <p>13 contentions regarding the RIMS system as disclosed in</p> <p>14 the '989 patent and the combination of the RIMS system</p> <p>15 in the '989 patent and the TV/2 search engine.</p> <p>16 Have you prepared some slides -- well, have you</p> <p>17 prepared a slide that summarizes some of your opinions</p> <p>18 with respect to the combination of the RIMS and TV/2</p> <p>19 systems?</p> <p>20 A Yes.</p> <p>21 Q Will you take a look at slide 107 in slide deck</p> <p>22 93? So can you summarize your opinions with regard to</p> <p>23 the deficiencies in the combination of the RIMS and</p> <p>24 TV/2 programs as related to the requirements of the</p> <p>25 patent claims?</p>
<p style="text-align: right;">2713</p> <p>1 points down there's a reference to integrating parts</p> <p>2 catalogs with dealers' computer systems such as order</p> <p>3 entry, inventory management and customer records.</p> <p>4 Does that describe how to use search results to build</p> <p>5 a parts list which could be sent to a parts ordering</p> <p>6 system?</p> <p>7 A No, it just says this is a possibility and a</p> <p>8 potential use. It doesn't say that the TV/2 system</p> <p>9 has this capability, and, in fact, it didn't have that</p> <p>10 capability.</p> <p>11 Q Do you have a slide illustrating the deficiencies</p> <p>12 of the TV/2 program as related to the requirements of</p> <p>13 the ePlus patent claims?</p> <p>14 A Yes.</p> <p>15 MS. ALBERT: Could we take a look at slide 75</p> <p>16 in slide deck 93?</p> <p>17 Q Could you summarize your analysis of the</p> <p>18 deficiencies of the TV/2 program as applied to the</p> <p>19 claims?</p> <p>20 A Yes. It's not a corresponding system as we have</p> <p>21 just discussed. It's simply a search program. It</p> <p>22 does not have multiple product catalogs. It doesn't</p> <p>23 even have one product catalog. It has no requisition</p> <p>24 capability and no ability to generate purchase orders.</p> <p>25 Q Now, was TV/2 modified in order to be integrated</p>	<p style="text-align: right;">2715</p> <p>1 A Yes, I've tried to take requirements -- in most</p> <p>2 cases, these requirements relate to multiple claims,</p> <p>3 but neither system was an electronic sourcing system.</p> <p>4 Neither system had multiple product catalogs. In</p> <p>5 fact, it would be my opinion that neither system had</p> <p>6 even a single product catalog.</p> <p>7 Neither system had a means for selecting product</p> <p>8 catalogs to search. Neither system had a means for</p> <p>9 generating an order list that includes at least one</p> <p>10 matching item selected by said means for searching</p> <p>11 since there was no means for searching product</p> <p>12 catalogs.</p> <p>13 Neither system built requisitions using data</p> <p>14 related to selected matching items and their</p> <p>15 associated sources.</p> <p>16 Neither system generated purchase orders from the</p> <p>17 requisitions that used selected matching items and</p> <p>18 their associated sources.</p> <p>19 Neither system had the ability to determine</p> <p>20 whether a selected matching item was available in the</p> <p>21 inventory of the catalog vendor from whom the buyer</p> <p>22 wanted to purchase.</p> <p>23 Neither system had the capability to convert data</p> <p>24 relating to a selected matching item from one source</p> <p>25 to a comparable or equivalent selected matching item</p>

<p style="text-align: right;">2716</p> <p>1 and a different source since the TV/2 system had no</p> <p>2 sources at all, and the only source in the RIMS system</p> <p>3 was Fisher itself.</p> <p>4 Q Now, you mentioned these modifications that were</p> <p>5 made during the electronic sourcing system project.</p> <p>6 What modifications do you understand had to be made to</p> <p>7 the prior RIMS system as it existed prior to the work</p> <p>8 on this electronic sourcing system project to render</p> <p>9 it useful and to have the functionality required by</p> <p>10 the electronic sourcing system of the patent?</p> <p>11 A Well, I've relied on the deposition testimony of</p> <p>12 the inventors who were involved in the project. And</p> <p>13 the description that they gave of what had to be done</p> <p>14 I wouldn't even call modifications.</p> <p>15 They, essentially, tore the RIMS system limb from</p> <p>16 limb and reused some code, but, essentially, it was a</p> <p>17 whole new development. They had to develop -- since</p> <p>18 the RIMS system was a seller oriented system --</p> <p>19 MR. McDONALD: I object. I think we're very</p> <p>20 vague here as to the timing of whether any of these</p> <p>21 changes even relate to the claims in the case. I</p> <p>22 think it's irrelevant.</p> <p>23 MS. ALBERT: I think my question specifically</p> <p>24 said the RIMS system as it existed prior to the</p> <p>25 inventors' work on the electronic sourcing system of</p>	<p style="text-align: right;">2718</p> <p>1 product development rather than a modification in my</p> <p>2 view, Your Honor, and I can explain why.</p> <p>3 THE COURT: But "it's" in that sentence means</p> <p>4 what came out of the project?</p> <p>5 THE WITNESS: That's correct.</p> <p>6 BY MS. ALBERT:</p> <p>7 Q So what modifications had to be made to the RIMS</p> <p>8 system as it is existed prior to that project in order</p> <p>9 to come up with the electronic sourcing system of the</p> <p>10 patented inventions?</p> <p>11 A There are a raft of them. First of all, the RIMS</p> <p>12 system, because it was a seller's system, was oriented</p> <p>13 toward use by the Fisher CSR. They had to put on a</p> <p>14 user interface that was oriented to a customer's use</p> <p>15 because the system that they were trying to build was</p> <p>16 an electronic sourcing system for use by a buyer. So</p> <p>17 it's a whole new user interface.</p> <p>18 Secondly, they had to do an interface to the</p> <p>19 search engine. They choose TV/2. And that was a very</p> <p>20 significant interface.</p> <p>21 They had to change the database. They had to make</p> <p>22 a wholesale change in the database because previously</p> <p>23 the database was a database of items.</p> <p>24 MR. McDONALD: Your Honor, I don't know what</p> <p>25 he's talking about here because a type of database</p>
<p style="text-align: right;">2717</p> <p>1 the patented inventions, and I tied it to the</p> <p>2 modifications that had to be made in order to meet the</p> <p>3 requirements of the patent claims.</p> <p>4 MR. McDONALD: He's talking about changing</p> <p>5 code, and I don't know what time his answer related</p> <p>6 to. I couldn't tell whether he said the code was</p> <p>7 changing. So I think maybe it's the answer I'm</p> <p>8 objecting to more than the question.</p> <p>9 THE COURT: The question is specific as to</p> <p>10 time. It started with the process and it existed</p> <p>11 before the combining process occurred in the project</p> <p>12 of IBM. Is that what your timing was?</p> <p>13 MS. ALBERT: That's what my timing was.</p> <p>14 THE COURT: Is that what you're answer is?</p> <p>15 THE WITNESS: I believe --</p> <p>16 THE COURT: It was when the project started</p> <p>17 and they made a lot of modifications to it. Is that</p> <p>18 what you're saying? In fact, you said it wasn't even</p> <p>19 modifications. They took what was there at that time</p> <p>20 and tore it limb from limb or something like that.</p> <p>21 THE WITNESS: Well, it's what I would</p> <p>22 characterize tearing it limb from limb, Your Honor.</p> <p>23 THE COURT: What?</p> <p>24 THE WITNESS: I would characterize it as</p> <p>25 tearing it limb from limb. It's virtually a new</p>	<p style="text-align: right;">2719</p> <p>1 isn't specified in any of the claims. For the witness</p> <p>2 to be talking about changes in the database type is</p> <p>3 not related to the patented invention, which is what</p> <p>4 the question was about.</p> <p>5 MS. ALBERT: Well, I think if you would have</p> <p>6 allowed Mr. Hilliard to continue, he would have tied</p> <p>7 it to the claim limitations, the changes in the</p> <p>8 database.</p> <p>9 BY MS. ALBERT:</p> <p>10 Q Were they specific changes made in the databases</p> <p>11 of the RIMS system as it existed prior to the</p> <p>12 inventors' work on the electronic sourcing system</p> <p>13 project that are specifically tied to some of the</p> <p>14 claim limitations at issue here?</p> <p>15 A Yes.</p> <p>16 Q What changes were those?</p> <p>17 A The RIMS system was oriented for keeping inventory</p> <p>18 of Fisher inventory and customer-owned inventory. The</p> <p>19 database that was required for the electronic sourcing</p> <p>20 system was a catalog database of multiple catalogs</p> <p>21 with the items in the multiple catalogs associated</p> <p>22 with multiple vendors. So that, according to the</p> <p>23 inventors, was a major change to the database. A</p> <p>24 wholesale change to the database. And it was done</p> <p>25 specifically to satisfy the need to access multiple</p>

<p style="text-align: right;">2720</p> <p>1 catalogs associated with items associated with</p> <p>2 vendors.</p> <p>3 Q Do you know if there are any changes made to the</p> <p>4 requisitions databases of the RIMS system as it</p> <p>5 existed prior to the electronic sourcing system</p> <p>6 project in order to accommodate the need to have</p> <p>7 requisitions having line items with associated source</p> <p>8 information?</p> <p>9 A Yes, absolutely. The inventors say, and it's</p> <p>10 clear from just the difference in functionality, that</p> <p>11 they had to interface to the TV/2 system to get the</p> <p>12 items that the TV/2 system found as a result of the</p> <p>13 search, the matching items, and then to put them into</p> <p>14 a requisition where previously the requisition was for</p> <p>15 only one source, now the requisition had to be for</p> <p>16 multiple sources because the search algorithm</p> <p>17 searching the catalogs was going to turn up items from</p> <p>18 multiple sources.</p> <p>19 So they had to do that interface and then change</p> <p>20 the requisition to have multiple sources. They then</p> <p>21 had to change the system or add the capability of</p> <p>22 generating multiple purchase orders from the</p> <p>23 requisition, and they had -- which wasn't in there</p> <p>24 before. They had to add the conversion capability to</p> <p>25 be able to convert the items from one vendor to</p>	<p style="text-align: right;">2722</p> <p>1 the vendor was Radio Shack and you were looking for an</p> <p>2 FM radio. The way the TV/2 system worked, it would</p> <p>3 turn up all references to Radio Shack because the term</p> <p>4 "radio" appears as part of the vendor name. So they</p> <p>5 had to be able to do the tagging so that they could</p> <p>6 search just the product descriptions and find radio</p> <p>7 there rather than finding all instances of radio in</p> <p>8 the electronic catalog.</p> <p>9 And then they had to create the order list that</p> <p>10 would then be fed back to the sourcing system, the</p> <p>11 electronic sourcing team.</p> <p>12 Q Do you have some slides that illustrate your</p> <p>13 opinions with respect to each specific claim as they</p> <p>14 relate to Lawson's contentions concerning the RIMS and</p> <p>15 TV/2 systems?</p> <p>16 A Yes, I do.</p> <p>17 MS. ALBERT: Could we have slide 1 in slide</p> <p>18 deck 256, please?</p> <p>19 Q Now, do you have an opinion, Mr. Hilliard, as to</p> <p>20 whether or not the RIMS system as described in the</p> <p>21 '989 patent anticipates Claim Three of the '683</p> <p>22 patent?</p> <p>23 A Yes, it does not.</p> <p>24 Q Why not?</p> <p>25 A It fails the basic description of Claim Three of</p>
<p style="text-align: right;">2721</p> <p>1 comparable items from another vendor. And they had to</p> <p>2 add the inventory checking to check the vendor's</p> <p>3 inventory for the inventory of the items that were the</p> <p>4 result of the selected catalog searches being catalogs</p> <p>5 of third-party vendors.</p> <p>6 So with all of those modifications and additions,</p> <p>7 according to the inventors, they were able to reuse</p> <p>8 some of the existing RIMS code, but a change of that</p> <p>9 magnitude, any computer professional will tell you</p> <p>10 that that's a rewrite.</p> <p>11 Q Now, were any changes necessary to the TV/2</p> <p>12 program as it existed prior to IBM's work on the</p> <p>13 Fisher-Scientific project in order to render it</p> <p>14 capable of performing the functions required for the</p> <p>15 electronic sourcing system of the claimed inventions?</p> <p>16 A Yes, according to the deposition testimony of</p> <p>17 Mr. Gounaris and Ms. Eng, IBM took over a year and</p> <p>18 devoted at least ten people to a project to do</p> <p>19 modifications that included interfacing two ways to</p> <p>20 the sourcing system. To receive information from the</p> <p>21 sourcing system and to after doing the search to be</p> <p>22 able to feed back the information to the sourcing</p> <p>23 system, they had to change the search algorithms so it</p> <p>24 could search sections of the database.</p> <p>25 Let me give you an example. If, for insurance,</p>	<p style="text-align: right;">2723</p> <p>1 being an electronic sourcing system as we've</p> <p>2 discussed. It's for use by a seller, not by a buyer,</p> <p>3 for example. And then every single element of that</p> <p>4 claim it fails. It doesn't have two product catalogs.</p> <p>5 It has no means of searching the product catalogs it</p> <p>6 doesn't have. It has no means of -- pardon me. It</p> <p>7 has no means of selecting from the product catalogs it</p> <p>8 doesn't have.</p> <p>9 It has no means of searching from the product</p> <p>10 catalogs it couldn't select. It has no means of</p> <p>11 building a requisition coming from the selected</p> <p>12 catalogs -- from the search of the selected catalogs</p> <p>13 because it can't select catalogs and search them.</p> <p>14 It has no means for processing the requisition to</p> <p>15 generate one or more purchase orders for the selected</p> <p>16 matching items. It couldn't generate multiple</p> <p>17 purchase orders. And it had no means of converting an</p> <p>18 item from one vendor to items from another vendor</p> <p>19 because it only referred to the one vendor, that being</p> <p>20 Fisher.</p> <p>21 Q Do you have an opinion as to whether or not the</p> <p>22 combination of the RIMS system as described in the</p> <p>23 '989 patent in combination with the TV/2 program</p> <p>24 renders Claim Three obvious?</p> <p>25 A Yes, I do.</p>

<p style="text-align: right;">2724</p> <p>1 Q What is your opinion?</p> <p>2 A It doesn't.</p> <p>3 Q Why not?</p> <p>4 A Basically, TV/2 doesn't bring anything to the</p> <p>5 table as described in the brochures and RIMS as</p> <p>6 described in the '989. As we saw, in order to produce</p> <p>7 an electronic sourcing system, you had to take the</p> <p>8 RIMS as described in the '989 patent and tear it limb</p> <p>9 from limb, virtually rewrite it. And then TV/2</p> <p>10 doesn't -- so if you took RIMS as it was and just</p> <p>11 added TV/2 to it, it really doesn't bring anything to</p> <p>12 the party. Neither one is an electronic sourcing</p> <p>13 system.</p> <p>14 Neither one has two product catalogs. Neither one</p> <p>15 has a means of selecting from the two product</p> <p>16 catalogs. Neither one has a means of searching for</p> <p>17 selected matching items among the selected product</p> <p>18 catalogs, and so on.</p> <p>19 I'm repeating myself, but basically the addition</p> <p>20 of TV/2 to the RIMS system as described in the '989</p> <p>21 patent brings nothing new to the table. The addition</p> <p>22 is no better than the RIMS system alone.</p> <p>23 Q Let's turn to your opinions with respect to claim</p> <p>24 26 of the '683 patent. Can we have slide 2?</p> <p>25 Do you have an opinion as to whether or not the</p>	<p style="text-align: right;">2726</p> <p>1 catalogs to search.</p> <p>2 So it fails on all of the elements of the Claim 26</p> <p>3 method claim.</p> <p>4 Q Do you have an opinion as to whether or not the</p> <p>5 combination of the RIMS and TV/2 systems would have</p> <p>6 rendered Claim 26 obvious?</p> <p>7 A Yes. It doesn't.</p> <p>8 Q Why not?</p> <p>9 A Once again, TV/2 doesn't bring anything to the</p> <p>10 table when what we're talking about is bringing it to</p> <p>11 the RIMS system as described in the '989 patent. The</p> <p>12 search capability, it can't search matching items from</p> <p>13 selected catalogs because there are no catalogs and no</p> <p>14 selected catalogs. There certainly aren't multiple</p> <p>15 catalogs to select from.</p> <p>16 So just having the search and viewing capability</p> <p>17 that's inherent or claimed to be inherent in TV/2</p> <p>18 doesn't add anything to the capability of a</p> <p>19 combination to meet any of the elements in this claim.</p> <p>20 Q Let's turn to Claim 28 of the '683 patent. Now,</p> <p>21 this claim, the first five elements are the same as</p> <p>22 the first five elements of Claim 26; is that right?</p> <p>23 A That's correct.</p> <p>24 Q So let's focus on converting data relating to a</p> <p>25 selected matching item and an associated source to</p>
<p style="text-align: right;">2725</p> <p>1 RIMS system as described in the '989 patent</p> <p>2 anticipates that claim?</p> <p>3 A It doesn't.</p> <p>4 Q Why not?</p> <p>5 A Let's look at the RIMS system as described in the</p> <p>6 '989 patent first. It didn't have two product</p> <p>7 catalogs, so there was no means of maintaining two</p> <p>8 product catalogs. Because there weren't multiple</p> <p>9 product catalogs, you couldn't select product catalogs</p> <p>10 to search. There's no search for matching items.</p> <p>11 There's no building of a requisition from the items</p> <p>12 found as a result of searching the selected catalogs</p> <p>13 because there's no searching, and there's no selected</p> <p>14 catalogs.</p> <p>15 And there's no processing of the requisition to</p> <p>16 generate one or more purchase orders for the selected</p> <p>17 matching items because the RIMS system as described in</p> <p>18 the '989 patent couldn't do multiple purchase orders</p> <p>19 to multiple vendors. And there's no way -- there's no</p> <p>20 capability in the RIMS system, that's something that</p> <p>21 had to be added to the RIMS system as described in the</p> <p>22 '989 patent, to give it the ability to search the</p> <p>23 inventory of the items found as a result of the search</p> <p>24 of the matching items in the catalog because, of the</p> <p>25 selected catalog, because there aren't selected</p>	<p style="text-align: right;">2727</p> <p>1 data relating to an item in a different source. Let</p> <p>2 me step back.</p> <p>3 Is your opinion with respect to the first five</p> <p>4 elements of Claim 28, would that be the same as your</p> <p>5 opinion with respect to the first five elements of</p> <p>6 Claim 26 with respect to whether or not the RIMS</p> <p>7 system as described in the '989 patent would</p> <p>8 anticipate those claim requirements?</p> <p>9 A Yes.</p> <p>10 Q What's your opinion?</p> <p>11 A My opinion is the same. Those first five</p> <p>12 elements, the RIMS system as described in the '989,</p> <p>13 doesn't meet any of those first five elements.</p> <p>14 Q So turning to the last element of that claim, does</p> <p>15 the RIMS system as described in the '989 patent</p> <p>16 satisfy that claim element?</p> <p>17 A The keywords are different source. There is no</p> <p>18 different source in the RIMS system. There's only one</p> <p>19 source that the customer can buy from, and that's</p> <p>20 Fisher. So it fails to meet that element as well.</p> <p>21 Q What about the combination of RIMS and TV/2? Does</p> <p>22 that combination render Claim 28 obvious?</p> <p>23 A No. TV/2 doesn't add anything to any of the</p> <p>24 elements.</p> <p>25 Q Let's turn to Claim 29 of the '683 patent. Are</p>

<p style="text-align: right;">2728</p> <p>1 the first six elements of Claim 29 the same as the</p> <p>2 elements of Claim 28?</p> <p>3 A Yes. And the last element is the same as the last</p> <p>4 element in Claim 26. 29 is basically a combination of</p> <p>5 26 and 28. So it doesn't meet 26, it doesn't meet 28,</p> <p>6 and it doesn't meet 29.</p> <p>7 Q What about the combination of the RIMS and TV/2</p> <p>8 systems? Would that combination have rendered Claim</p> <p>9 29 obvious?</p> <p>10 A No.</p> <p>11 Q Let's turn to the claims of the '516 patent. Do</p> <p>12 you have an opinion as to whether or not the RIMS</p> <p>13 system as described in the '989 patent anticipates</p> <p>14 Claim One of the '516 patent?</p> <p>15 A It does not.</p> <p>16 Q Why not?</p> <p>17 A Well, first of all, the RIMS system is not an</p> <p>18 electronic sourcing system, as I've said before. It's</p> <p>19 a seller's system, not a buyer's system, among other</p> <p>20 things. There's no collection of catalogs in the RIMS</p> <p>21 system. There's no predetermined criteria associated</p> <p>22 with the selection of catalogs since there's no</p> <p>23 selection of catalogs.</p> <p>24 There's no second criteria in the RIMS system for</p> <p>25 items. The RIMS system allows just a parts lookup</p>	<p style="text-align: right;">2730</p> <p>1 A That's correct.</p> <p>2 Q And so would your opinion with regard to those</p> <p>3 first six elements of Claim Two be the same for Claim</p> <p>4 Two as for Claim One with respect to whether or not</p> <p>5 the RIMS system as described in the '989 patent</p> <p>6 anticipates those claim requirements?</p> <p>7 A Yes. My opinion with regard to those elements is</p> <p>8 the same.</p> <p>9 Q What about with respect to this last element,</p> <p>10 catalogs comprising said collection of catalogs are</p> <p>11 stored in separate databases, does the RIMS system as</p> <p>12 describe in the '989 patent satisfy that claim</p> <p>13 requirement?</p> <p>14 A No, the RIMS system doesn't have multiple</p> <p>15 catalogs. So regardless of how many databases it has,</p> <p>16 it doesn't store separate catalogs in separate</p> <p>17 databases.</p> <p>18 Q What about the combination of RIMS and TV/2, would</p> <p>19 that combination render the claim obvious?</p> <p>20 A It wouldn't in the case of the first six elements</p> <p>21 for the same reason as for Claim One, and there are no</p> <p>22 catalogs or separate databases in the TV/2 system</p> <p>23 either.</p> <p>24 Q Now, let's refer to Claim Six of the '516 patent.</p> <p>25 The first six elements of Claim Six are the same as</p>
<p style="text-align: right;">2729</p> <p>1 by -- not even -- a part lookup by part number. It's</p> <p>2 not a search based on a criteria. There's no catalog</p> <p>3 selection protocol by this description or any other</p> <p>4 because there aren't catalogs to select from. And</p> <p>5 there's no search program relying on the selection</p> <p>6 criteria because it doesn't have the ability to have</p> <p>7 those selection criteria for searching, and there's no</p> <p>8 search algorithm.</p> <p>9 Q What about the combination of the RIMS and TV/2</p> <p>10 systems, would that combination render Claim One</p> <p>11 obvious?</p> <p>12 A No. TV/2 fails all the same elements. It has</p> <p>13 no -- it's not a sourcing system. There's no</p> <p>14 collection of catalogs. There are no criteria built</p> <p>15 into it. There's no catalog selection protocol. It</p> <p>16 does have a search program, but the search program as</p> <p>17 the TV/2 system is described in these two brochures</p> <p>18 doesn't do this search relying on a second set of</p> <p>19 criteria to select specific items from a catalog</p> <p>20 selection using a catalog selection protocol it</p> <p>21 doesn't have.</p> <p>22 Q Let's turn to Claim Two of the '516 patent. And</p> <p>23 all the elements are the same in Claim Two as Claim</p> <p>24 One with the exception of the last element; is that</p> <p>25 correct?</p>	<p style="text-align: right;">2731</p> <p>1 the elements of Claim One; is that correct?</p> <p>2 A Yes.</p> <p>3 Q So would your opinion with regard to those</p> <p>4 elements be the same for Claim Six as it was for Claim</p> <p>5 One with respect to the issue of whether or not the</p> <p>6 RIMS system as described in the '989 patent satisfies</p> <p>7 those claim requirements?</p> <p>8 A Yes.</p> <p>9 Q And what is your opinion?</p> <p>10 A It doesn't.</p> <p>11 Q Then with regard to the last element of Claim Six,</p> <p>12 said second set of predetermined criteria include at</p> <p>13 least one of a catalog number and item textual</p> <p>14 information. Does the RIMS system as described in the</p> <p>15 '989 patent satisfy that requirement?</p> <p>16 A There's no catalog number and there's no -- it has</p> <p>17 textual information, but it can't use that textual</p> <p>18 information as criteria. So no, it doesn't. It</p> <p>19 doesn't satisfy that element either.</p> <p>20 Q Would the combination of the RIMS and TV/2 systems</p> <p>21 rendered Claim Six obvious?</p> <p>22 A No, once again, TV/2 brings nothing to the party</p> <p>23 here. It doesn't add anything to the failure of the</p> <p>24 RIMS system to meet the elements.</p> <p>25 Q Let's turn to Claim 9 of the '516 patent. In your</p>

<p style="text-align: right;">2732</p> <p>1 opinion, does the RIMS system as described in the '989</p> <p>2 patent satisfy all of the requirements of Claim 9?</p> <p>3 A No.</p> <p>4 Q Why not?</p> <p>5 A It's not an electronic sourcing system because,</p> <p>6 among other things, it's used by the seller, not the</p> <p>7 buyer. There's no collection of catalog items where</p> <p>8 catalog items have to be associated with vendors</p> <p>9 stored in electronic format. So there's not an</p> <p>10 identifiable -- an identification code associated with</p> <p>11 an item in the first catalog since there's no first</p> <p>12 catalog. And there's no identification code for an</p> <p>13 item in the second catalog for the same reason.</p> <p>14 There's only one vendor, so there's no ability to</p> <p>15 select an identification code of the first and second</p> <p>16 catalogs because there aren't first and second</p> <p>17 catalogs where one provides the other or one leads to</p> <p>18 the other. It doesn't do that.</p> <p>19 Q Does the combination of the RIMS and TV/2 system</p> <p>20 render Claim 9 obvious?</p> <p>21 A No, TV/2 doesn't add anything here either. The</p> <p>22 search and display capability of TV/2 as described in</p> <p>23 the two publications doesn't relate to any of these</p> <p>24 elements.</p> <p>25 Q Can you turn to Claim 21 of the '516 patent?</p>	<p style="text-align: right;">2734</p> <p>1 that would provide an equivalency of an item in one</p> <p>2 catalog to a second identification code in a second</p> <p>3 located item in the other. It fails that one as well.</p> <p>4 Q For purposes of your anticipation analysis, would</p> <p>5 you have to find that the RIMS system satisfied each</p> <p>6 and every one of the claim requirements in order to</p> <p>7 find that claim anticipated by that prior art system?</p> <p>8 A That's my understanding. If any one element of a</p> <p>9 claim is missing, then there's no -- then the system</p> <p>10 that's claimed to anticipate it doesn't. In order to</p> <p>11 anticipate a claim, a prior art system must anticipate</p> <p>12 every element of the claim.</p> <p>13 So the fact that in this case the RIMS system</p> <p>14 arguably if you called the product number a user</p> <p>15 generated criteria satisfies one element of the claim,</p> <p>16 even with that the RIMS system doesn't satisfy all the</p> <p>17 elements of the claim, and, therefore, the RIMS system</p> <p>18 doesn't anticipate the claim.</p> <p>19 Q For purposes of your opinions with respect to</p> <p>20 obviousness, would you have had to find that the</p> <p>21 combination of the RIMS and TV/2 system satisfied each</p> <p>22 and every requirement of the claim in order to render</p> <p>23 an opinion that that claim was obvious based upon that</p> <p>24 combination?</p> <p>25 A Yes. The RIMS system as described in the '989</p>
<p style="text-align: right;">2733</p> <p>1 In your opinion, does the RIMS system as described</p> <p>2 in the '989 patent satisfy all the requirements of</p> <p>3 Claim 21?</p> <p>4 A No.</p> <p>5 Q Why not?</p> <p>6 A Well, as we've discussed or as I've pointed out,</p> <p>7 it's not an electronic sourcing system. It does have</p> <p>8 a requisition module, which includes data fields. And</p> <p>9 user generated -- if the user generated criteria is a</p> <p>10 part number, and only if the user generated criteria</p> <p>11 is a part number, then it could satisfy the second</p> <p>12 item here, which is actually the first limitation, the</p> <p>13 first element, because electronic sourcing system is</p> <p>14 sort of the caption for the whole thing.</p> <p>15 So I've given that the benefit of the doubt since</p> <p>16 the criteria conceivably could be a part number. But</p> <p>17 there's no catalog collection searching module.</p> <p>18 There's no catalog selection criteria to select less</p> <p>19 than the entire collection of catalogs because there's</p> <p>20 no collection of catalogs. There's no multiple</p> <p>21 purchase order generation. There's no equivalent</p> <p>22 items from one catalog to another catalog.</p> <p>23 There's no general equivalency from one catalog to</p> <p>24 another because there aren't multiple catalogs. And</p> <p>25 there's no determination of a cross-reference table</p>	<p style="text-align: right;">2735</p> <p>1 patent and the TV/2 system as described in the two</p> <p>2 brochures, assuming those brochures are accurate,</p> <p>3 which is also something we don't know.</p> <p>4 Q What is your opinion with respect to whether or</p> <p>5 not the combination of the RIMS system as described in</p> <p>6 the '989 patent and the TV/2 system as described in</p> <p>7 the two brochures renders Claim 21 obvious?</p> <p>8 A Instead of anticipating every element of that</p> <p>9 claim, it at most anticipates one element. And since</p> <p>10 that's all that it arguably anticipates, even in the</p> <p>11 combination, the combination doesn't anticipate the</p> <p>12 claim.</p> <p>13 Q Let's look at Claim 22, if we could. And that</p> <p>14 claim has all of the same elements as Claim 21 but</p> <p>15 adds an additional element at the end, said</p> <p>16 determination system includes an identical</p> <p>17 identification code for each of said located items.</p> <p>18 Does the RIMS system as described in the '989 patent</p> <p>19 satisfy that claim requirement?</p> <p>20 A Well, since there's no determination system from</p> <p>21 the prior element, as I've discussed, then there's no</p> <p>22 -- the determination system can't include something.</p> <p>23 So, no, it doesn't satisfy that final element either.</p> <p>24 Q So what is your opinion with respect to whether or</p> <p>25 not the RIMS system anticipates Claim 22?</p>

<p style="text-align: right;">2736</p> <p>1 A It doesn't.</p> <p>2 Q Would the addition of TV/2 to the RIMS system cure</p> <p>3 the deficiencies of the RIMS systems with respect to</p> <p>4 Claim 22?</p> <p>5 A No. TV/2 as described in the two brochures, even</p> <p>6 if it performs as described there, adds nothing.</p> <p>7 Q So what is your opinion as to whether or not the</p> <p>8 combination of RIMS and TV/2 renders Claim 22 obvious?</p> <p>9 A It does not.</p> <p>10 Q Let's turn, if we could, to Claim 29. Do you have</p> <p>11 an opinion as to whether or not the RIMS system as</p> <p>12 described in the '989 patent fully satisfies all of</p> <p>13 the requirements of Claim 29?</p> <p>14 A It doesn't. I have an opinion and it doesn't.</p> <p>15 Q Why not?</p> <p>16 A It doesn't satisfy any of the elements of Claim</p> <p>17 29. RIMS is not an electronic sourcing system.</p> <p>18 There's no collection of catalogs. There's no</p> <p>19 predetermined criteria associated with the collection</p> <p>20 of catalogs. There's no second set of predetermined</p> <p>21 criteria associated with the items in the catalogs</p> <p>22 because there aren't catalogs. There's no catalog</p> <p>23 selection protocol in this description or any other.</p> <p>24 And then there's no search program relying on the</p> <p>25 criteria because there aren't the criteria in the</p>	<p style="text-align: right;">2738</p> <p>1 search capability of any sort because it only has the</p> <p>2 parts number lookup.</p> <p>3 It doesn't have a means of entering product</p> <p>4 information that at least partially describes one</p> <p>5 desired item. All that can be entered is a product</p> <p>6 number, and a product number doesn't describe an item.</p> <p>7 It doesn't have a means for searching for matching</p> <p>8 items that match the entered product information.</p> <p>9 There's no means for searching whatsoever.</p> <p>10 It doesn't have a means for generating an order</p> <p>11 list that includes at least one matching item.</p> <p>12 Selected by said means of searching, there's no said</p> <p>13 means of searching.</p> <p>14 There's no means of building a requisition that</p> <p>15 uses the data obtained from the database related to</p> <p>16 the selection of selected matching items on the order</p> <p>17 list for all the reasons above. And there's no means</p> <p>18 for processing the requisition to generate purchase</p> <p>19 orders for the matching items.</p> <p>20 So it fails all the criteria. There are no</p> <p>21 matching items. So even if it were to generate</p> <p>22 purchase orders, which it doesn't, it wouldn't do it</p> <p>23 in this case.</p> <p>24 Q Does the combination of RIMS and TV/2 render Claim</p> <p>25 One of the '172 patent obvious?</p>
<p style="text-align: right;">2737</p> <p>1 cross-reference table. Since there's only one vendor,</p> <p>2 there's no cross reference that provides the ability</p> <p>3 to link a vendor catalog item with another catalog</p> <p>4 item from a different vendor or different</p> <p>5 predetermined third party.</p> <p>6 Q Would the addition of TV/2 to the RIMS system cure</p> <p>7 the deficiencies of the RIMS system with respect to</p> <p>8 Claim 29?</p> <p>9 A No.</p> <p>10 Q And so do you have an opinion as to whether or not</p> <p>11 the combination of the RIMS and TV/2 systems renders</p> <p>12 Claim 29 obvious?</p> <p>13 A It doesn't.</p> <p>14 Q Let's look now at the final claim, Claim One of</p> <p>15 the '172 patent. With reference to the '172 patent,</p> <p>16 in your opinion, does the RIMS system satisfy all of</p> <p>17 the requirements of Claim One of the '172 patent?</p> <p>18 A No, it doesn't satisfy any of them.</p> <p>19 Q Why not?</p> <p>20 A It's not an electronic sourcing system. Now, this</p> <p>21 is the claim that doesn't refer to catalogs. It just</p> <p>22 refers to a database. But the database in the RIMS</p> <p>23 system is not a database containing items associated</p> <p>24 with at least two vendors because the RIMS system only</p> <p>25 has one vendor and that's Fisher. It doesn't have a</p>	<p style="text-align: right;">2739</p> <p>1 A In order to render Claim One of the '172 patent</p> <p>2 obvious, it would have to satisfy all of the elements</p> <p>3 of the '172, Claim One. And because there are no</p> <p>4 catalogs in this case, conceivably in this case TV/2</p> <p>5 does bring something to the party. It does bring the</p> <p>6 ability to support portions of the database</p> <p>7 separately.</p> <p>8 It does bring a means for entering product</p> <p>9 information that partially describes an item. You can</p> <p>10 put a description in, and it can search on the</p> <p>11 description.</p> <p>12 And it does provides a means for searching for</p> <p>13 matching items that match the product information. So</p> <p>14 it does in fact, the combination, satisfy three of the</p> <p>15 elements, but it doesn't bring anything to the</p> <p>16 combination with regard to satisfying the other</p> <p>17 elements.</p> <p>18 So in order for the combination to anticipate the</p> <p>19 claim, we'd have to have a checkmark on every single</p> <p>20 one of these, not just three of them, which we don't.</p> <p>21 Q Mr. Hilliard, did you also consider other evidence</p> <p>22 that would show that the patented inventions were</p> <p>23 innovative?</p> <p>24 A Yes.</p> <p>25 Q What other evidence did you consider in forming</p>

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<p style="text-align: right;">2740</p> <p>1 your opinions?</p> <p>2 A Well, I considered the fact that it was considered</p> <p>3 to be an innovative invention by the industry. There</p> <p>4 was an industry research and evaluation group known as</p> <p>5 the Aberdeen Group that ranked it very high. And then</p> <p>6 the Internet and Electronic Commerce Conference, which</p> <p>7 is an industry organization that provides awards, gave</p> <p>8 it an award shortly after it was developed as a</p> <p>9 Supplylink or Cornerstone product, that it was above</p> <p>10 the capabilities of comparable -- of other systems</p> <p>11 that attempt to do the same thing. And also it's been</p> <p>12 licensed by other vendors.</p> <p>13 So all of those put together are really sort of</p> <p>14 additional indications that it's an innovative</p> <p>15 invention.</p> <p>16 MS. ALBERT: Thank you, Mr. Hilliard. I have</p> <p>17 no furthest questions.</p> <p>18 THE COURT: I think Mr. McDonald may have</p> <p>19 more than five mints or so. So I think it will be a</p> <p>20 good time to take the afternoon recess.</p> <p>21 Just take your books with you if you would,</p> <p>22 please.</p> <p>23 (The jury is exiting the courtroom.)</p> <p>24 THE COURT: How long do you think you're</p> <p>25 going to take?</p>	<p style="text-align: right;">2742</p> <p>1 MR. ROBERTSON: Hope springs eternal, Your</p> <p>2 Honor.</p> <p>3 THE COURT: I know it springs eternal, but</p> <p>4 sometimes reality has got to grab a hold of the back</p> <p>5 of your neck and shake it.</p> <p>6 MR. ROBERTSON: Let me just suggest, Your</p> <p>7 Honor, I think there are some issues that have now</p> <p>8 fallen by the wayside.</p> <p>9 THE COURT: Yes, I think there are. There's</p> <p>10 no question about it.</p> <p>11 MR. ROBERTSON: I think it can be granted in</p> <p>12 part and denied in part. And we think we can make</p> <p>13 some headway. My suggestion would be, we each have</p> <p>14 two, it would be 45 minutes each. So that's an hour</p> <p>15 and a half total.</p> <p>16 MR. McDONALD: I don't think it should be</p> <p>17 more than that. It may be a little less than that,</p> <p>18 that part of it.</p> <p>19 Jury instructions, I guess, an hour and a</p> <p>20 half.</p> <p>21 THE COURT: Have you all looked at the jury</p> <p>22 instructions?</p> <p>23 MR. ROBERTSON: Yes, we have, Your Honor.</p> <p>24 THE COURT: Are we far off the mark?</p> <p>25 MR. McDONALD: I think we maybe can count on</p>
<p style="text-align: right;">2741</p> <p>1 MR. McDONALD: About an hour, Your Honor.</p> <p>2 THE COURT: And your redirect will be very</p> <p>3 brief?</p> <p>4 MS. ALBERT: Yes, Your Honor.</p> <p>5 THE COURT: All right. We'll take a</p> <p>6 20-minutes recess.</p> <p>7 Excuse me. I have been gifted with a</p> <p>8 temporary restraining order application, and in order</p> <p>9 that I can tell those people when I can hear them, I</p> <p>10 need to understand a little bit about how long you</p> <p>11 think we'll take tomorrow with the arguments.</p> <p>12 I'm going to give you first priority. I</p> <p>13 think I may give them first priority if they are not</p> <p>14 going to be very long, but I thought I'd find out from</p> <p>15 you-all first since you have been here longest.</p> <p>16 What is your estimate of the arguments on the</p> <p>17 motions for JMOL?</p> <p>18 MR. McDONALD: Can you give us a moment to</p> <p>19 talk amongst ourselves, so to speak, and I could talk</p> <p>20 with Mr. Robertson, so we can figure that out?</p> <p>21 MR. ROBERTSON: I didn't hear the last</p> <p>22 question you asked?</p> <p>23 THE COURT: The length of the arguments on</p> <p>24 the JMOL. Does anybody really think I can grant a</p> <p>25 JMOL in this case?</p>	<p style="text-align: right;">2743</p> <p>1 one hand the number of issues we might have to</p> <p>2 resolve. Five.</p> <p>3 THE COURT: Depending on the number of</p> <p>4 fingers.</p> <p>5 MR. McDONALD: Five. I'll be specific.</p> <p>6 MR. ROBERTSON: I think we're down to five or</p> <p>7 so.</p> <p>8 THE COURT: All right. I'll decide how to</p> <p>9 approach then. You-all probably wouldn't object to a</p> <p>10 little sleeping in time tomorrow, would you?</p> <p>11 MR. ROBERTSON: Not at all, Your Honor.</p> <p>12 THE COURT: All right. Thank you.</p> <p>13 (Recess taken.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">2748</p> <p>1 Not in the way that's described in the patents-in-suit.</p> <p>2 Q You are adding a little more to my question.</p> <p>3 A I'm sorry. I was intending to qualify that with a further</p> <p>4 explanation.</p> <p>5 Q I'm just asking, did your work in the '80s on procurement</p> <p>6 systems, that could search for items?</p> <p>7 A Many of the systems had the ability to search -- to enter</p> <p>8 criteria and search for items that met those criteria, yeah.</p> <p>9 Q That was for the purpose of purchasing the products,</p> <p>10 finding a product to purchase; correct?</p> <p>11 A No. In most cases, that was for the development of a</p> <p>12 sales order for selling their own products. Most of them did</p> <p>13 not have that capability in the procurement area for searching</p> <p>14 for products to buy. It was searching among their own database</p> <p>15 of products that they sold.</p> <p>16 Q So did you, in the '80s, work on any systems that were</p> <p>17 computerized systems to help one of your clients buy things?</p> <p>18 A Almost all of the systems had purchasing capability, but</p> <p>19 they didn't have the ability to search for the items to buy.</p> <p>20 Q Did you work on any systems in the '80s that could search</p> <p>21 for items to buy?</p> <p>22 A There may have been a few, but I don't recall off the top</p> <p>23 of my head.</p> <p>24 Q Now, for purposes of your analysis for this case, you used</p> <p>25 the perspective of one of ordinary skill as you described it</p>	<p style="text-align: right;">2750</p> <p>1 A Yes.</p> <p>2 Q If I understood your testimony today, you were saying that</p> <p>3 the TV/2 system didn't have catalogs; is that right?</p> <p>4 A There were no catalogs delivered as part of the TV/2</p> <p>5 system or promoted as being delivered as part of it. That's my</p> <p>6 understanding, yes.</p> <p>7 Q If we go to the second page of this brochure, see if we</p> <p>8 can blow up that picture near the bottom of the page. It's got</p> <p>9 a picture of the TV/2 system on a computer here; is that your</p> <p>10 understanding?</p> <p>11 A Yes.</p> <p>12 Q And there's a CD to the left of the computer in the</p> <p>13 picture; is that right?</p> <p>14 A Yes.</p> <p>15 Q That's the CD that would have catalogs and technical</p> <p>16 manuals and things like that; is that your understanding?</p> <p>17 A That's my understanding, that it's an exemplary CD that</p> <p>18 could contain information that the TV/2 system could view and</p> <p>19 search.</p> <p>20 Q So you would agree that one of ordinary skill in the art</p> <p>21 would understand from reviewing these materials that the point</p> <p>22 of the system, even though it might be sold without the</p> <p>23 catalogs loaded on them, is you'd get a CD or catalog data on a</p> <p>24 computer and load it into the system; right?</p> <p>25 A Well, this also shows that there is a computer there, and</p>
<p style="text-align: right;">2749</p> <p>1 earlier; correct?</p> <p>2 A Yes.</p> <p>3 Q That would be someone with a computer science type of</p> <p>4 degree and one or two years of experience; correct?</p> <p>5 A Yes.</p> <p>6 Q And so when you reviewed the documents in the case, did</p> <p>7 you review them from that standpoint?</p> <p>8 A Yes.</p> <p>9 Q Can we turn to the TV/2 brochure, Defendant's Exhibit 107.</p> <p>10 This is one of the documents you reviewed --</p> <p>11 THE COURT: Excuse me. My machine is going crazy.</p> <p>12 Does everybody else have a good machine?</p> <p>13 THE CLERK: Hit the screen one time and see --</p> <p>14 THE COURT: I'm going to hit it real hard in a</p> <p>15 minute.</p> <p>16 THE CLERK: We had problems during the recess, but we</p> <p>17 straightened them out.</p> <p>18</p> <p>19 (Discussion off the record.)</p> <p>20</p> <p>21 THE COURT: As long the jury -- you are okay? I'll</p> <p>22 do without, and you go ahead, and --</p> <p>23 THE CLERK: Do you want me to get IT up here now?</p> <p>24 Q Do you see there the first page of that Technical Viewer/2</p> <p>25 brochure?</p>	<p style="text-align: right;">2751</p> <p>1 the brochure clearly states that it doesn't come with a</p> <p>2 computer, that there's a prerequisite that the buyer has to</p> <p>3 have, so it's a piece of software. It's not a CD or a</p> <p>4 computer, it's a piece of software, and that certainly</p> <p>5 indicates and it indicates in the brochure that it's used to</p> <p>6 read data that can be input into it through a CD, yes.</p> <p>7 Q So you would agree that this brochure does teach or</p> <p>8 suggest to that person with the computer science degree and a</p> <p>9 couple of years of experience that you take that TV/2 software,</p> <p>10 load it on a computer, and put a catalog on a CD into the</p> <p>11 system? That would at least be one way to use it; right?</p> <p>12 A It says that's one of the possibilities, yes.</p> <p>13 Q So your testimony about TV/2 not having catalogs, you are</p> <p>14 just saying when you buy the system from IBM, it's not going to</p> <p>15 come with your own personal catalogs that you would select to</p> <p>16 load on; right?</p> <p>17 A That's what I'm saying, yes.</p> <p>18 Q Okay. But you do understand that the materials regarding</p> <p>19 the TV/2 system would teach or suggest to one of ordinary skill</p> <p>20 in the art that they could use that system with one or two or</p> <p>21 more CDs of catalogs depending on what their needs are; right?</p> <p>22 A This is an undated brochure, number one. We don't know</p> <p>23 when it was published. Number two, it certainly indicates that</p> <p>24 it has that capability, but we know that it didn't have the</p> <p>25 capability of doing the catalogs that were necessary for the</p>

<p style="text-align: right;">2752</p> <p>1 electronic sourcing system because that was the subject of a</p> <p>2 contract between IBM and Fisher to develop that.</p> <p>3 Q Well, please listen to my questions and just answer my</p> <p>4 questions. Your lawyer will have a chance to ask you some more</p> <p>5 questions and clarify things if necessary, but I just want to</p> <p>6 see if we at least agree on one thing which is that one of</p> <p>7 ordinary skill, seeing these TV/2 materials, would understand</p> <p>8 that the TV/2 system could be used with multiple electronic</p> <p>9 catalogs?</p> <p>10 A It says in the brochure, whenever this brochure came out</p> <p>11 in whatever version it refers to, that that's one of the</p> <p>12 possibilities that it could be adapted to do, yes, and that's</p> <p>13 my understanding.</p> <p>14 Q Did you use that understanding in your analysis?</p> <p>15 A Yes.</p> <p>16 Q You do agree that the TV/2 system is prior art to the</p> <p>17 patents-in-suit?</p> <p>18 A What TV/2 system?</p> <p>19 MS. ALBERT: Calls for a legal conclusion. I don't</p> <p>20 know that he's competent to say what is prior art or not.</p> <p>21 THE COURT: You can ask him what he considered as</p> <p>22 prior art. Whether it is or isn't is a matter the jury will be</p> <p>23 instructed on as a matter of law.</p> <p>24 MR. McDONALD: Can we go to Mr. Hilliard's slide</p> <p>25 number four, please.</p>	<p style="text-align: right;">2754</p> <p>1 THE COURT: Can you just ask him the question of</p> <p>2 whether he considered this as prior art. Whether it is or is</p> <p>3 not is a matter that the jury will be instructed on. They then</p> <p>4 will determine it. The issue is whether he considered it to be</p> <p>5 prior art as of whatever time you are talking about.</p> <p>6 Q Mr. Hilliard, did you consider the TV/2 system as</p> <p>7 described in the brochure, Defendant's Exhibit 107, to be prior</p> <p>8 art?</p> <p>9 A Exhibit 107 has no date, so I can't -- I don't know</p> <p>10 whether Exhibit 107 would be considered prior art or not from</p> <p>11 that standpoint, and I don't know whether what's described in</p> <p>12 the brochure -- in the general terms, it's described as what</p> <p>13 TV/2 actually did or what the brochure was intending to portray</p> <p>14 it could do.</p> <p>15 Brochures, as one of -- from the point of view of one of</p> <p>16 ordinary skill in the art, one knows that brochures often</p> <p>17 describe not only existing capabilities but future capabilities</p> <p>18 of products, so the combination of this being a marketing</p> <p>19 product brief, is what I would call it, and not knowing its</p> <p>20 date, I can't say. I had to look at it and analyze whether if</p> <p>21 it were prior art, whether it would anticipate the claims, but</p> <p>22 I can't say what it is or isn't.</p> <p>23 Q For purposes of your analysis, you did not personally make</p> <p>24 a conclusion one way or the other as to whether the system</p> <p>25 described in the brochure, Defendant's Exhibit 107, was prior</p>
<p style="text-align: right;">2753</p> <p>1 Q This is one of the slides you prepared for your testimony;</p> <p>2 right, Mr. Hilliard?</p> <p>3 A Yes.</p> <p>4 Q The heading on your slide is prior art system, TV/2;</p> <p>5 right?</p> <p>6 A Yes.</p> <p>7 Q You considered the TV/2 system to be a prior art system;</p> <p>8 right?</p> <p>9 A Well, I probably should have titled that claimed or</p> <p>10 alleged prior art systems. It was my understanding that it was</p> <p>11 Lawson's contention that TV/2 was prior art, so I was dealing</p> <p>12 with that. I didn't put the full title.</p> <p>13 Q You haven't been shy about disagreeing with Lawson's</p> <p>14 contentions where you thought that was appropriate, have you?</p> <p>15 A No, sir.</p> <p>16 Q So this slide, you created this slide, and you chose to</p> <p>17 label it prior art systems TV/2 yourself; right?</p> <p>18 A I told you what I meant by that, but, yes.</p> <p>19 Q Let me just understand, though. Are you disagreeing that</p> <p>20 the system -- if we can be specific, the system as described in</p> <p>21 the TV/2 brochure, Defendant's Exhibit 107, that describes as</p> <p>22 prior art TV/2 system?</p> <p>23 MS. ALBERT: Asked and answered and calls for a legal</p> <p>24 conclusion.</p> <p>25 MR. McDONALD: Clarify what he's taking about.</p>	<p style="text-align: right;">2755</p> <p>1 art? Yes or no?</p> <p>2 A Whether the system described in the brochure -- the</p> <p>3 description is so vague and uncertain that I couldn't make that</p> <p>4 determination.</p> <p>5 THE COURT: I think he said he assumed for the</p> <p>6 purposes of his analysis that it was prior art because he had</p> <p>7 to address that question, but he made no judgment whether, in</p> <p>8 fact, it was. Is that what you are saying?</p> <p>9 THE WITNESS: Yes, sir. Yes, Your Honor.</p> <p>10 Q If we can turn to slide number two of Mr. Hilliard's</p> <p>11 slides. This is another slide you prepared; right, Mr.</p> <p>12 Hilliard?</p> <p>13 A Yes.</p> <p>14 Q This one is entitled prior art systems RIMS; correct?</p> <p>15 A Yes.</p> <p>16 Q For purposes of your analysis, did you assume the RIMS</p> <p>17 system, as depicted in the '989 RIMS patent, is prior art?</p> <p>18 A I assumed that the RIMS system as described in the '989</p> <p>19 patent was of -- I don't know that I'm able to make the legal</p> <p>20 judgment, but I assumed that it was available since it was</p> <p>21 disclosed and referenced in the patents, that it was prior and</p> <p>22 that it was as described in the '989.</p> <p>23 Q You understand also that one form that something can be</p> <p>24 prior art is if it's on sale more than one year before the</p> <p>25 filing date on the patent?</p>

<p style="text-align: right;">2764</p> <p>1 to benefit people who buy products?</p> <p>2 A It was intended primarily to benefit Fisher because it was</p> <p>3 a Fisher system. If you look in the '989 patent, for example,</p> <p>4 and this doesn't necessarily -- what's described here doesn't</p> <p>5 necessarily conform to the '989 patent according to the</p> <p>6 inventors, but if you look at the '989 patent, there is a</p> <p>7 section on cross-referencing, and it basically says that the</p> <p>8 purpose of cross-referencing is to supply customers with Fisher</p> <p>9 products even though they might give the customer service rep a</p> <p>10 competing product, a competing vendor's product.</p> <p>11 Q Let's stick with this brochure, Mr. Hilliard, all right?</p> <p>12 Would you agree that one of ordinary skill reading this</p> <p>13 brochure in this particular bullet point would understand that</p> <p>14 this means that this Fisher RIMS system could cross-reference</p> <p>15 the customer's stock numbers with all of that customer's</p> <p>16 supplier numbers?</p> <p>17 A I would understand that it means that the system was</p> <p>18 claimed at some point to have that capability at some point in</p> <p>19 time, yes.</p> <p>20 Q So would you agree, at least in part, that the RIMS</p> <p>21 system, as described in this April 1993 brochure, at least in</p> <p>22 part is a buyer's system?</p> <p>23 MS. ALBERT: Object to the form of the question to</p> <p>24 the characterization of the brochure as being April 1993 since</p> <p>25 the brochure is undated.</p>	<p style="text-align: right;">2766</p> <p>1 A Yes. They are intended to communicate potential benefits</p> <p>2 to the buyer to allow Fisher to put this system into their</p> <p>3 premise along with the Fisher customer sales rep to operate it.</p> <p>4 Q Isn't it true that the features of the Fisher RIMS system</p> <p>5 were developed to provide Fisher Scientific's customers with</p> <p>6 flexibility and customization for requisitions, purchasing, and</p> <p>7 inventory control?</p> <p>8 A I wouldn't agree with that characterization, no.</p> <p>9 Q Can we turn to the next page of the brochure, please. Can</p> <p>10 you blow up that paragraph below the keyboard.</p> <p>11 Do you see the sentence there in the brochure,</p> <p>12 Mr. Hilliard where it says, the exclusive features of Fisher</p> <p>13 RIMS were developed to provide Fisher Scientific's valued</p> <p>14 customers with maximum flexibility and system customization for</p> <p>15 requisitions, purchasing, and inventory control. Do you see</p> <p>16 that?</p> <p>17 A I see where it says that. That's certainly a sales claim.</p> <p>18 To me, that's like saying, I'm from the IRS, I'm here to help</p> <p>19 you.</p> <p>20 Q This is a document from Fisher; right?</p> <p>21 A Yes.</p> <p>22 Q This is from the 1993 time frame; right?</p> <p>23 A Yes, and they certainly would like their customers to</p> <p>24 believe that, I'm quite sure.</p> <p>25 Q Are you disputing what's in that statement?</p>
<p style="text-align: right;">2765</p> <p>1 MR. McDONALD: I think I've already shown it, Your</p> <p>2 Honor, from the document dated April '93, and in the official</p> <p>3 trademark file history it refers specifically to a specimen of</p> <p>4 use, and this is the specimen of use.</p> <p>5 THE COURT: It doesn't -- it's not a dated specimen</p> <p>6 of use.</p> <p>7 MR. McDONALD: But it was submitted to the Trademark</p> <p>8 Office with the date stamp April 30, 1993, so we know it's no</p> <p>9 later than that.</p> <p>10 THE COURT: Well, that's a different question.</p> <p>11 Sustained.</p> <p>12 Q Would you agree with me, Mr. Hilliard, that the system</p> <p>13 described in this brochure that's part of the RIMS trademark</p> <p>14 application describes a system that, at least in part, is for</p> <p>15 the benefit of buyers?</p> <p>16 A That's a different question -- you asked me before whether</p> <p>17 I would agree it's a buyer's system, and I would not agree it's</p> <p>18 a buyer's system. It's a seller's system. It did provide some</p> <p>19 benefits to buyers of Fisher products, but it is not a buyer's</p> <p>20 system which was the question that you asked me previously.</p> <p>21 Q Take them one question at a time. And if we blow back up</p> <p>22 to this page here, the entirety of this page two of the</p> <p>23 brochure, aren't all of the features listed on this page</p> <p>24 intended to communicate the benefit of the RIMS system to</p> <p>25 somebody who buys products?</p>	<p style="text-align: right;">2767</p> <p>1 A Pardon?</p> <p>2 Q Are you disputing what's highlighted up on the screen</p> <p>3 right now?</p> <p>4 A I'm not disputing that the RIMS system, some RIMS system</p> <p>5 could provide some benefits to buyers, but that wasn't its</p> <p>6 purpose. I'm just -- and I'm -- the testimony of the inventors</p> <p>7 certainly indicated to me that this was not the principal</p> <p>8 reason why the features were developed. The features were</p> <p>9 developed so that Fisher could sell more of its products to its</p> <p>10 customers rather than having its customers buy from</p> <p>11 competitors.</p> <p>12 Q But would you agree that at least one purpose of the</p> <p>13 system, as it existed in April of '93 as described in this</p> <p>14 brochure, was to benefit customers?</p> <p>15 MS. ALBERT: Asked and answered, Your Honor.</p> <p>16 THE COURT: Sustained.</p> <p>17 Q Let's go -- isn't it true that Fisher told its customers</p> <p>18 that the people in the customers's organization could enter</p> <p>19 requisitions and purchase orders using -- using the Fisher RIMS</p> <p>20 system, that the customer could, in fact, enter requisitions</p> <p>21 and purchase orders?</p> <p>22 MS. ALBERT: Object to the form. I don't know how he</p> <p>23 could know what Fisher told its customers.</p> <p>24 MR. McDONALD: He's reviewed the documents in the</p> <p>25 case.</p>

<p>2768</p> <p>1 THE COURT: You mean that document or what?</p> <p>2 MR. McDONALD: I was asking the question generally to</p> <p>3 start with here.</p> <p>4 THE COURT: Objection sustained.</p> <p>5 MR. McDONALD: Can we go another five pages into the</p> <p>6 brochure here. Can we blow up the paragraph at the bottom of</p> <p>7 the page.</p> <p>8 Q Do you see there, Mr. Hilliard, in the paragraph that</p> <p>9 begins with the word, a Fisher customer service representative?</p> <p>10 A I see that.</p> <p>11 Q So it talks about a Fisher customer service</p> <p>12 representative; right?</p> <p>13 A Yes.</p> <p>14 Q Then the next sentence after that, it says, your</p> <p>15 requisition or purchase order can be entered remotely by the</p> <p>16 people in your organization who will be using the product, or</p> <p>17 your Fisher CSR can enter it directly into the Fisher RIMS PC.</p> <p>18 Either way, you'll get complete reports on every transaction;</p> <p>19 do you see that?</p> <p>20 A I see where it says that, but you've left out the</p> <p>21 remainder of the first sentence.</p> <p>22 Q We can highlight that if you'd like, but as I understand</p> <p>23 this, would you agree what's being described in this April '93</p> <p>24 brochure is both the customer service representative and the</p> <p>25 customer's own people can use the RIMS system?</p>	<p>2770</p> <p>1 options, and all three of these options in the '989 patent</p> <p>2 result in a sale from Fisher to the customer, no direct sales</p> <p>3 from a third-party vendor to the customer regardless of whether</p> <p>4 its's delivered direct on a drop shipment or delivered from a</p> <p>5 warehouse.</p> <p>6 In all three of those instances as described in the '989</p> <p>7 patent, the sale is from Fisher to the customer. There is no</p> <p>8 option in the '989 patent for a sale direct from a third party</p> <p>9 to a customer. So I don't dispute that they promoted this. I</p> <p>10 don't dispute that the description in the '989 patent covers</p> <p>11 this, but this does not imply any vendor to the customer other</p> <p>12 than Fisher. And that's described right in the description of</p> <p>13 the '989.</p> <p>14 Q Do you have an understanding that Fisher gets about</p> <p>15 two-thirds of its products actually from other sources?</p> <p>16 A I don't know what percentage, but they don't</p> <p>17 manufacture -- my understanding is they don't manufacture</p> <p>18 necessarily all of the products that they warehouse and sell.</p> <p>19 Q So they act for some products as a middleman for other</p> <p>20 sources; right?</p> <p>21 A By a middleman, you mean buy and resell?</p> <p>22 Q Yes.</p> <p>23 A Yes, they buy and resell.</p> <p>24 Q And sometimes they'll actually have the products delivered</p> <p>25 directly from who they are buying from directly to the</p>
<p>2769</p> <p>1 A I agree that it says that in the brochure, but according</p> <p>2 to the inventors, it never worked that way, and certainly the</p> <p>3 system described in the '989 patent doesn't work that way.</p> <p>4 Q Go to the next page of the brochure, please. If you</p> <p>5 highlight the column on the bottom left.</p> <p>6 Now, in this section, it's referring to the color-coded</p> <p>7 paths in the schematic diagram above; do you see that?</p> <p>8 A Yes, I see that, yes.</p> <p>9 Q And it says following that, you can get a sense of how</p> <p>10 smoothly and efficiently Fisher RIMS handles purchases of</p> <p>11 various types; do you see that?</p> <p>12 A Yes.</p> <p>13 Q It lists three types under that; correct?</p> <p>14 A Yes.</p> <p>15 Q One is Fisher products, one is third-party purchases</p> <p>16 delivered from a Fisher warehouse, and the third is third-party</p> <p>17 purchases delivered direct; do you see that?</p> <p>18 A Yes.</p> <p>19 Q Do you have any reason to dispute the accuracy of this</p> <p>20 representation in this brochure that was provided to the</p> <p>21 trademark office?</p> <p>22 A I don't know what system this refers to in that there's no</p> <p>23 tying this brochure to the '989 patent specifically, at least</p> <p>24 according to the inventors, but if you were to look at the '989</p> <p>25 patent, the '989 patent describes all three of the these</p>	<p>2771</p> <p>1 customer; right?</p> <p>2 A Yes, but the ones they buy from bill them for the product,</p> <p>3 and then they bill the customer. So the sale goes from Fisher</p> <p>4 to the customer. There is no direct sale from the third party</p> <p>5 to the customer. There's only one vendor to the customer, and</p> <p>6 that's Fisher.</p> <p>7 Q Can you put up the Court's definition of electronic</p> <p>8 sourcing system, please.</p> <p>9 You have that definition up on the screen now,</p> <p>10 Mr. Hilliard?</p> <p>11 A Yes.</p> <p>12 Q Would you agree that the Fisher RIMS system described in</p> <p>13 the brochure from April of '93 that we were just going through</p> <p>14 is an electronic system for use by a prospective buyer to</p> <p>15 locate and find items to purchase from sources, suppliers, or</p> <p>16 vendors?</p> <p>17 A No.</p> <p>18 Q You don't agree that the brochure, if it's an accurate</p> <p>19 description, if we can accept it as accurate, that it meets</p> <p>20 that description, Mr. Hilliard?</p> <p>21 MS. ALBERT: Object to the form. I think</p> <p>22 Mr. Hilliard already testified that he does not accept it as</p> <p>23 accurate.</p> <p>24 THE COURT: He's already answered the question. He</p> <p>25 said, no, he doesn't.</p>

<p style="text-align: right;">2772</p> <p>1 MR. McDONALD: But I'd like him to at least tell me</p> <p>2 whether or not he would agree that if the brochure is accurate,</p> <p>3 that it meets the Court's definition of electronic sourcing</p> <p>4 system. I think I'm entitled to know that.</p> <p>5 MS. ALBERT: Same objection.</p> <p>6 THE COURT: He already answered that. He said, no,</p> <p>7 it doesn't. Assuming it's accurate, he said, no, it doesn't.</p> <p>8 THE WITNESS: Even assuming it's accurate, no, it</p> <p>9 doesn't.</p> <p>10 THE COURT: I think he said that.</p> <p>11 Q With the respect to the RIMS system as described now in</p> <p>12 the '989 patent, Mr. Hilliard, I'd like to but the brochure</p> <p>13 aside now and talk about the patent.</p> <p>14 A Okay.</p> <p>15 Q In your analysis, you took into account the Court's</p> <p>16 definition of catalogs; correct?</p> <p>17 A Yes.</p> <p>18 Q And is it your opinion that there are no databases in the</p> <p>19 RIMS system that meet the Court's definition of catalog?</p> <p>20 A That's correct, because the databases in the RIMS system</p> <p>21 do not have any relation to multiple vendors. The items aren't</p> <p>22 related to a vendor. There's nothing in the item file that</p> <p>23 indicates vendor, and there's only one vendor, not multiple.</p> <p>24 Q So is it your opinion that if a given part master or item</p> <p>25 master does not have an indication of who the vendor is within</p>	<p style="text-align: right;">2774</p> <p>1 keep track of even though on a given day they might not have</p> <p>2 them in inventory? Is that the sort of thing you are talking</p> <p>3 about?</p> <p>4 A They are items Fisher wants to keep track of in order to</p> <p>5 manage their customer account.</p> <p>6 Q Would you agree that the RIMS system, as described in the</p> <p>7 '989 patent, has cross-reference tables?</p> <p>8 A Yes.</p> <p>9 Q Those cross-reference tables include information from</p> <p>10 multiple vendors, don't they?</p> <p>11 A Their cross-reference tables include product numbers from</p> <p>12 multiple vendors.</p> <p>13 Q That would be information from multiple vendors; right?</p> <p>14 A They are product numbers related to multiple vendor</p> <p>15 products. I guess you could say it that way.</p> <p>16 Q Do you consider those cross-reference tables in the Fisher</p> <p>17 '989 patent to be catalogs since they have information from</p> <p>18 vendors?</p> <p>19 A No. Because they don't indicate a vendor from which the</p> <p>20 customer is going to purchase product, and, in fact, if you</p> <p>21 look at the bottom of column 34, you'll see what those</p> <p>22 cross-reference tables are used for. They're used so that the</p> <p>23 Fisher customer sales rep can supply a Fisher product instead</p> <p>24 of a competing vendor product.</p> <p>25 Q Do you think the purpose of the table relates to whether</p>
<p style="text-align: right;">2773</p> <p>1 that master, it's not a catalog?</p> <p>2 A That's my understanding of the Court's construction, yes.</p> <p>3 Q And your understanding is that the parts master is a list</p> <p>4 of items that are kept in the customer's inventory; is that</p> <p>5 right?</p> <p>6 A It's a -- the part master is a list of items that are kept</p> <p>7 in the inventory that Fisher manages. The inventory that</p> <p>8 Fisher manages, according to the '989 patent are of five</p> <p>9 different types; types one, three, four, five, and six. Some</p> <p>10 of those, I think -- four of those five types -- there's a type</p> <p>11 two mentioned also, but it's not used. So four of the five</p> <p>12 types are owned by Fisher, and -- pardon me. Three of the five</p> <p>13 types are owned by Fisher. One of the five types is owned by</p> <p>14 customer, and then the fifth are items that are not -- that the</p> <p>15 RIMS system is not used to acquired. I can go type by type</p> <p>16 number with you if you'd like.</p> <p>17 Q That's all right. Let me ask you ask it this way: Would</p> <p>18 you agree that the databases in the RIMS '989 patent system</p> <p>19 relate to items that are already owned by either the customer</p> <p>20 or the distributor?</p> <p>21 A Yes. Pardon me. There are items listed in the database</p> <p>22 that may not be in stock in either customer or the</p> <p>23 distributor's inventory, so it might -- at any given point in</p> <p>24 time might not be owned by one or the other.</p> <p>25 Q For those, would those be items the customer would want to</p>	<p style="text-align: right;">2775</p> <p>1 it's a catalog or not?</p> <p>2 A The catalog has to refer to the vendor for whom the -- who</p> <p>3 is going to sell the product to the customer.</p> <p>4 Q I just want to get clarified, though. When you looked at</p> <p>5 applying the Court's definition of catalog in this case, did</p> <p>6 you look at the purpose of the database you were looking at as</p> <p>7 an important consideration in deciding whether or not a given</p> <p>8 database is a catalog?</p> <p>9 A You know, I apologize for trying to answer your question</p> <p>10 by giving you another reason why -- you asked me whether I</p> <p>11 agreed with one reason, and I tried to explain another reason.</p> <p>12 I apologize for doing that. I'm sorry.</p> <p>13 What I'm saying is that the Court's construction requires</p> <p>14 that the catalog information needs to be related to sources or</p> <p>15 vendors from which the customer is going to buy product. In</p> <p>16 this case, that other vendor information doesn't relate to</p> <p>17 sources or vendors from whom the customer is going to buy</p> <p>18 product. It relates to just a cross-reference to the other</p> <p>19 vendor's product number.</p> <p>20 THE COURT: In that answer, when you said, in this</p> <p>21 case, did you mean in the '989 patent or the RIMS system, or</p> <p>22 what did you mean?</p> <p>23 THE WITNESS: In the RIMS system.</p> <p>24 THE COURT: Okay.</p> <p>25 THE WITNESS: I'm sorry, Your Honor.</p>

<p style="text-align: right;">2776</p> <p>1 Q The RIMS system also, as described in the '989 patent, 2 also includes a host database; correct? 3 A Yes. 4 Q That host database, what sort of item information is kept 5 in the host database in the Fisher RIMS system as described in 6 the '989 patent? 7 A Information about the items that the host distributor -- 8 the distributor, which is Fisher, which owns the host computer 9 sells to its customers. 10 Q Is that a catalog as the Court construed it? 11 A No, because it -- there is only one vendor. It doesn't 12 provide information. At least as I understand it, it doesn't 13 provide information about vendors from which the customer is 14 going to buy product. The customer only buys product from 15 Fisher. 16 Q Would you agree that that host database at least includes 17 information that originates from Fisher as a vendor or 18 distributor? 19 A Yes, it includes database that originates from Fisher, 20 yes. 21 Q And includes information about products such as an item 22 number and description and things like that; right? 23 A Yes. 24 Q And it's an organized collection of data, isn't it? 25 A Yes.</p>	<p style="text-align: right;">2778</p> <p>1 Q So if the system has the customer service representative, 2 then you would consider that to be a buyer-focused system? 3 A If a system is operated by a CSR -- well, that wouldn't 4 necessarily be the only criteria, but certainly when you look 5 at the system as described in the '989 patent, which is 6 operated by a seller, the Fisher CSR, not by the buyer who -- 7 when you look at the fact that it's operated by the seller 8 along with all the other description, it's clear that it's a -- 9 the system as described in the '989 is a seller's system, not a 10 buyer's system. 11 Q Isn't it true that under your analysis, the system 12 described in the patents-in-suit would also be seller systems 13 in the preferred embodiment described in these patents? 14 A The -- 15 MS. ALBERT: I'm sorry, I missed the question. Can 16 you repeat it, please? 17 Q Let me just go right to it. Can you turn to the patent 18 number '683, Exhibit 1, and column three. If you go down to 19 line 48 to 56, please, of column three. Now, we've moved away 20 from the RIMS patent now, and now we're involved in one of the 21 patents involved in the lawsuit; correct? 22 A Yes. 23 Q It's your understanding all the patents in the lawsuit 24 have essentially the same detailed description of the 25 invention; right?</p>
<p style="text-align: right;">2777</p> <p>1 Q But it's not a catalog; right? 2 A No. 3 Q Did ePlus ask you to do any analysis of the infringement 4 issues in this case? 5 A No. 6 Q Did you describe the systems in the patents in the suit as 7 systems that would be operated by the buyer as opposed to a 8 seller like Fisher? 9 A I'm sorry. I didn't follow your question. 10 Q I'm sorry. Maybe -- I just remember you saying something 11 about a buyer system versus a seller system when you were 12 comparing the RIMS and the patents-in-suit, so maybe we'll 13 start by, can you explain to me whether or not the systems 14 described in the patents-in-suit, did you consider those buyer 15 systems or seller systems? 16 A I would consider those buyer systems because they are 17 operated -- because they empower the buyer to select the 18 vendors from whom he or she is going to buy product. 19 Q Okay. And then the Fisher system as described in the '989 20 RIMS patent, did you consider that a seller system? 21 A I considered that a seller system because as described in 22 the '989 patent, the operator of that system is a Fisher 23 employee, the Fisher CSR. 24 Q Customer service representative; right? 25 A Yes.</p>	<p style="text-align: right;">2779</p> <p>1 A Very similar. It varies a bit from patent to patent. 2 Q And you see here the very first paragraph under the 3 heading detailed description of the invention? 4 A Yes. 5 Q First line says, figures 1A and 1B show preferred 6 embodiments of the electronic sourcing system five of the 7 present invention. Do you see that? 8 A Yes. 9 Q The next sentence, as shown in figure 1A, a local 10 computer, which is preferably located at or near a customer 11 SITE and the site of just-in-time, or JIT, inventory is 12 preferably used by an on-site customer service representative 13 dedicated to a customer to assist that customer in 14 requisitioning items needed. Do you see that language? 15 A I do. 16 Q So isn't it true that, at least in the preferred format of 17 the use of the system described in the patents-in-suit, they 18 would be used with the customer service representative just 19 like the RIMS system? 20 MS. ALBERT: Object to the form of the question. It 21 suggests that that's the only preferred embodiment described in 22 the patent. 23 THE COURT: I think you asked specifically about the 24 preferred embodiment. 25 MS. ALBERT: He said that was the preferred</p>

<p style="text-align: right;">2780</p> <p>1 embodiment. There are multiple preferred embodiments.</p> <p>2 THE COURT: You mean it should be a preferred</p> <p>3 embodiment.</p> <p>4 MS. ALBERT: Correct, Your Honor.</p> <p>5 THE COURT: Sustained.</p> <p>6 Q Would you agree, Mr. Hilliard, that as shown on the</p> <p>7 language up on the screen here, a preferred embodiment of the</p> <p>8 system described in the patents-in-suit is to have that system</p> <p>9 used by an on-site customer service representative just like</p> <p>10 the RIMS system described in the '989 patent?</p> <p>11 A Well, this is an introductory paragraph to quite a long</p> <p>12 detailed description of the invention, and it does say that,</p> <p>13 but as you go through the rest of the detailed description, it</p> <p>14 gives options even in that preferred embodiment where the buyer</p> <p>15 is empowered to do the catalog selection and the search and the</p> <p>16 requisition building and so forth.</p> <p>17 So, yes, it says that, but that doesn't characterize the</p> <p>18 whole of the preferred embodiment if you go through and read</p> <p>19 the entire detailed description.</p> <p>20 Q Are you aware of any language in the patent which actually</p> <p>21 says it's preferable to have the customer operate the system</p> <p>22 themselves?</p> <p>23 A I think I can find that, yes. Well, that says that's part</p> <p>24 of a preferred environment, that is an option within the</p> <p>25 preferred environment, yes.</p>	<p style="text-align: right;">2782</p> <p>1 wouldn't necessarily agree that it had that capability.</p> <p>2 I would agree that it could be as was shown with over a</p> <p>3 year of effort by ten IBM employees, it could be made to have</p> <p>4 that capability, but I don't agree that as delivered it had</p> <p>5 that capability, and certainly the brochures, the DX-105 and</p> <p>6 107 aren't specific enough to corroborate that it had that</p> <p>7 capability.</p> <p>8 Q Can we turn to the Technical Viewer/2 general information</p> <p>9 manual, DX-105, to page seven, please. Can you blow up the</p> <p>10 section entitled search.</p> <p>11 Do you have up on the screen now, Mr. Hilliard, a</p> <p>12 description of the features of IBM Technical Viewer/2 with</p> <p>13 respect to search; correct?</p> <p>14 A Yes.</p> <p>15 Q This indicates that TV/2 had a search facility that can</p> <p>16 locate every occurrence of a word or phrase in either the</p> <p>17 current topic, a list of selected topics, the complete</p> <p>18 document, or another document; correct?</p> <p>19 A That's what the brochure claims, yes.</p> <p>20 Q Now, is it -- for purposes of your analysis, did you</p> <p>21 assume that was true in the IBM system as it existed back in</p> <p>22 1992 or not?</p> <p>23 A I didn't find this to be convincing. I found this to be a</p> <p>24 marketing -- I looked at it from the point of view of one of</p> <p>25 ordinary skill in the art, and I would look at it as a</p>
<p style="text-align: right;">2781</p> <p>1 Q I'm asking whether there's any indication that that's</p> <p>2 actually a preferred way to do things.</p> <p>3 A I believe I can find that in the patent, yes.</p> <p>4 Q Okay. Would you go ahead and show me what you are talking</p> <p>5 about.</p> <p>6 THE WITNESS: May take me a moment.</p> <p>7 Q How long do you think it will take you, because I'll</p> <p>8 withdraw --</p> <p>9 THE COURT: The answer would be about an hour and a</p> <p>10 half then. You talk about rising on the bait.</p> <p>11 MR. McDONALD: Threw myself a curve ball there. I'll</p> <p>12 withdraw the question.</p> <p>13 THE WITNESS: I don't think it would take -- a few</p> <p>14 moments.</p> <p>15 THE COURT: If he wants to withdraw it, he can</p> <p>16 withdraw it. It's his question. He can pull it any time he</p> <p>17 wants to. Do you want him to look or pull?</p> <p>18 MR. McDONALD: I think we're going to go on.</p> <p>19 THE COURT: Abandon your ship.</p> <p>20 Q You would agree that the TV/2 system did have a way to</p> <p>21 allow a user to select certain topics to search?</p> <p>22 A Based on the lack of specificity of both of the brochures</p> <p>23 that were produced, combined with the recollection of the two</p> <p>24 IBM employees that were involved and the amount of effort on</p> <p>25 IBM's part that was required to allow it to do that, no, I</p>	<p style="text-align: right;">2783</p> <p>1 marketing claim, and when I combined that with the actual</p> <p>2 knowledge of what happened when IBM was contracted to deliver</p> <p>3 TV/2 with that capability, I didn't consider that to be</p> <p>4 accurate, no.</p> <p>5 Q Would you agree that the people that were working at IBM</p> <p>6 in the early '90s on the TV/2 product would know more about</p> <p>7 what it could do than you do?</p> <p>8 A Most likely.</p> <p>9 Q Would you agree that the TV/2 product, as of the 1992,</p> <p>10 early 1993 time frame had the ability to create a shopping list</p> <p>11 of products and pass that list to another application?</p> <p>12 A I would agree that it was claimed to have that, although</p> <p>13 my reading of the depositions of the IBM employees who were</p> <p>14 involved in this during that time frame said that developing</p> <p>15 that shopping list capability was one of the tasks that they</p> <p>16 undertook as part of their contract with Fisher.</p> <p>17 So it would seem to me that it didn't have that capability</p> <p>18 despite the fact that it was claimed.</p> <p>19 Q Do you understand that the TV/2 product had in the '92,</p> <p>20 early '93 time frame something called an application program</p> <p>21 interface?</p> <p>22 A Yes.</p> <p>23 Q What is your understanding as to what the purpose of that</p> <p>24 is?</p> <p>25 A Application programming interface, often called an API, is</p>

<p style="text-align: right;">2784</p> <p>1 a component of a system that allows it to interface to related</p> <p>2 applications so that it can pass data back and forth.</p> <p>3 Q Is it your understanding that part of that project that</p> <p>4 Fisher asked IBM to do was to help customize the interface</p> <p>5 specific to the Fisher system?</p> <p>6 A Yes.</p> <p>7 Q Now, in your testimony, you basically, I think you said</p> <p>8 more than once the TV/2 system didn't bring anything to the</p> <p>9 table; did I get that right?</p> <p>10 A With respect to the elements of the claims I said that,</p> <p>11 yes. I didn't say that just in general, but if you looked at</p> <p>12 it in the context of the claims and the elements of the claims,</p> <p>13 it didn't bring anything to the table that would enable the</p> <p>14 combination to meet the claims, and, therefore, rendering a</p> <p>15 combination an obvious way of meeting the claims.</p> <p>16 Q When Fisher paid IBM about \$600,000 to do this work, do</p> <p>17 you have an understanding as to whether IBM brought anything to</p> <p>18 the table in exchange for getting that money?</p> <p>19 A Well, after the 600 -- after the \$600,000, yes, but the</p> <p>20 TV/2 system as it was deliverable prior to the contract with</p> <p>21 Fisher, no.</p> <p>22 Q What is your you understanding as to what IBM actually</p> <p>23 delivered with that?</p> <p>24 A They delivered a revised version of TV/2 that had, after</p> <p>25 ten individuals worked for over a year for, I think you said</p>	<p style="text-align: right;">2786</p> <p>1 Q Can we turn to the TV/2 brochure, Defendant's Exhibit 107,</p> <p>2 please. Go to the fourth page of that document. Blow up the</p> <p>3 column on the left, and specifically let's blow up the third</p> <p>4 bullet point. And maybe I should -- I don't know if you can</p> <p>5 read the fine print there. Let's blow up the whole left column</p> <p>6 so we can see the context. This is a part of the TV/2 brochure</p> <p>7 that's talking about potential uses; correct?</p> <p>8 A Yes.</p> <p>9 Q And the third one is, integrating parts catalogs with</p> <p>10 dealers' computer systems such as order entry, inventory</p> <p>11 management, and customer records; right?</p> <p>12 A Yes.</p> <p>13 Q Wouldn't you agree, Mr. Hilliard, that someone with a</p> <p>14 computer science degree and one or two years of experience in</p> <p>15 working with computer procurement systems reading this bullet</p> <p>16 point in the TV/2 brochure would understand that it would be a</p> <p>17 good idea to combine the TV/2 system with an inventory</p> <p>18 management system like the RIMS system to get the features</p> <p>19 discussed in this brochure?</p> <p>20 A What features are you referring to?</p> <p>21 Q Any of the features that the brochure highlights as</p> <p>22 benefits of the TV/2 system?</p> <p>23 A I don't see a feature.</p> <p>24 Q Well, we've already gone through that brochure, haven't</p> <p>25 we, a little bit, Mr. Hilliard? You know the brochure talks</p>
<p style="text-align: right;">2785</p> <p>1 \$600,000, a version of TV/2 that had interfaces to the</p> <p>2 electronic sourcing system, had the ability to search</p> <p>3 individual portions based on tags, it had a data loading</p> <p>4 capability, and it had an order list capability, that all of</p> <p>5 those things were developed onto the TV/2 system, not as it's</p> <p>6 described in the 105 and 107, but after that \$600,000, one-year</p> <p>7 plus project was complete.</p> <p>8 Q Would you agree that one of ordinary skill reading the</p> <p>9 Technical Viewer/2 brochure would think it would be obvious to</p> <p>10 combine a system like the RIMS system described in the '989</p> <p>11 patent with a searching system like the TV/2 system?</p> <p>12 A No.</p> <p>13 Q Well --</p> <p>14 A Well, for what purpose?</p> <p>15 Q For the purposes described in the TV/2 brochure.</p> <p>16 A No, because the RIMS system -- to combine the -- the RIMS</p> <p>17 system was a requisition and inventory management system. The</p> <p>18 TV/2 is a search and viewer system. The -- there's nothing in</p> <p>19 the brochure that suggests combining it with a requisition and</p> <p>20 inventory management system.</p> <p>21 I mean, I'd have to look at the purpose, but it doesn't</p> <p>22 seem obvious to me from the point of view of one of ordinary</p> <p>23 skill in the art that it would be an obvious thing to combine</p> <p>24 for the purposes described in that brochure in either of the</p> <p>25 two brochures.</p>	<p style="text-align: right;">2787</p> <p>1 about some potential benefits of the TV/2 system, don't you?</p> <p>2 A It talks about -- features are different than benefits. I</p> <p>3 didn't see any features described.</p> <p>4 Q I'll rephrase the question.</p> <p>5 A It talks about potential benefits as -- I don't recall it</p> <p>6 talking about features.</p> <p>7 Q Let's talk about benefits then. Would you agree that one</p> <p>8 of ordinary skill in the art, seeing this paragraph about</p> <p>9 integrating parts catalogs, would agree that if they had a RIMS</p> <p>10 system, an inventory management system like RIMS, and they</p> <p>11 wanted to get the benefits described in this brochure, that it</p> <p>12 would be an obvious thing to combine a TV/2 system with the</p> <p>13 RIMS system?</p> <p>14 A If one had a RIMS system, would it -- well, the only</p> <p>15 company that had a RIMS system was Fisher, and it wasn't</p> <p>16 obvious -- Fisher didn't sell the RIMS system to competitors or</p> <p>17 to customers. They installed the RIMS system in their</p> <p>18 customers' site.</p> <p>19 Q I wasn't asking about selling, Mr. Hilliard. I had a very</p> <p>20 specific question?</p> <p>21 A You're saying if someone had a RIMS system. So the only</p> <p>22 one who had a RIMS system was Fisher.</p> <p>23 Q All right.</p> <p>24 A Okay.</p> <p>25 Q But let's make sure we're clear. I'm talking about one of</p>

<p style="text-align: right;">2788</p> <p>1 ordinary skill in the art who knew about the RIMS system and</p> <p>2 was looking at this brochure. Wouldn't they read this and say</p> <p>3 it's an obvious thing to combine that RIMS system with the TV/2</p> <p>4 system?</p> <p>5 A They might look at that and say that it's a possibility to</p> <p>6 do that. I'm not sure that you'd look at it and say it was</p> <p>7 obvious to do that. You'd have to -- obvious for what purpose?</p> <p>8 It's not clear to me for what purpose it would be -- I mean, if</p> <p>9 you give me a purpose, I can say, well, would it be obvious for</p> <p>10 that purpose.</p> <p>11 Q Mr. Hilliard, based on all your investigation for purposes</p> <p>12 of this case, do you have an understanding as to what the</p> <p>13 benefits of the TV/2 system were as they were described in the</p> <p>14 TV/2 literature?</p> <p>15 A I understand that the claimed benefits are the ability to</p> <p>16 search and view databases or data on CDs or so forth.</p> <p>17 Q Things like catalog that are large volumes of data;</p> <p>18 right?</p> <p>19 A Such as that, right.</p> <p>20 Q And could include images and things like that?</p> <p>21 A Yes.</p> <p>22 Q Using that as the benefits of the TV/2 system, isn't it</p> <p>23 true that one of ordinary skill back in 1993, April of '93, if</p> <p>24 they knew about the RIMS system in the '989 patent, they saw</p> <p>25 this TV/2 brochure, it would be obvious to them, to get the</p>	<p style="text-align: right;">2790</p> <p>1 THE COURT: Or at least the most common error I made.</p> <p>2</p> <p>3 REDIRECT EXAMINATION</p> <p>4 BY MS. ALBERT:</p> <p>5 Q Mr. Hilliard, you were directed to this DX-62 that</p> <p>6 includes the Fisher RIMS brochure at page 32 of DX-62.</p> <p>7 A Yes.</p> <p>8 Q Does that brochure provide any details for how the RIMS</p> <p>9 system is supposed to perform the features that are touted in</p> <p>10 that brochure?</p> <p>11 A No. No, no detail at all.</p> <p>12 Q Does the brochure change -- does the description of the</p> <p>13 system included in the brochure change any of your opinions as</p> <p>14 to the functionality that the RIMS system had in the 1993 to</p> <p>15 1994 time frame?</p> <p>16 A No, no, it doesn't, because the inventors said that it was</p> <p>17 not an accurate description of the RIMS system.</p> <p>18 Q Does the description of the RIMS system included in the</p> <p>19 brochure change any of your conclusions about whether the RIMS</p> <p>20 system satisfied any of the elements of the asserted claims?</p> <p>21 A No.</p> <p>22 Q Now, you were referenced to the description in the patent</p> <p>23 of one of the preferred embodiments, and I want to refer to</p> <p>24 PX-1.</p> <p>25 You were referenced to the embodiment where the customer</p>
<p style="text-align: right;">2789</p> <p>1 benefits of the TV/2 system, incorporated with that RIMS system</p> <p>2 by combining the two things together?</p> <p>3 A I'd love to be able to answer your question, but I'm not</p> <p>4 sure what benefits you are talking about. The benefits have to</p> <p>5 be in relation to something, and so -- it's difficult for me to</p> <p>6 respond to your question -- if you could lay out what benefits</p> <p>7 we're talking about, I could perhaps answer the question, but</p> <p>8 in terms of just to combine two systems because they're</p> <p>9 potentially combinable, unless you know what purpose you would</p> <p>10 want to do it for, for some purposes it might be obvious and</p> <p>11 for others it wouldn't.</p> <p>12 THE COURT: I think we've been through this already</p> <p>13 once.</p> <p>14 MR. McDONALD: I was ready to move on.</p> <p>15 THE COURT: Are you ready? About how close are you?</p> <p>16 MR. McDONALD: I'm very, very close. In fact, I</p> <p>17 think I may stop right here.</p> <p>18 MS. ALBERT: I just have a couple redirect questions,</p> <p>19 Your Honor.</p> <p>20 THE COURT: Do you know the most fundamental flaw in</p> <p>21 redirect?</p> <p>22 MS. ALBERT: What's that?</p> <p>23 THE COURT: Opening doors. The most common error</p> <p>24 made.</p> <p>25 MS. ALBERT: I understand, Your Honor.</p>	<p style="text-align: right;">2791</p> <p>Hilliard - Redirect</p> <p>1 service representative is a user of the system, and you</p> <p>2 indicated that there was another embodiment described where the</p> <p>3 customer end user is the user of the system. Could I direct</p> <p>4 your attention to column 16 of PX-1.</p> <p>5 A Okay.</p> <p>6 Q And if you look --</p> <p>7 A 15 did you say?</p> <p>8 Q Column 16.</p> <p>9 A 16, okay.</p> <p>10 Q And if you refer to the paragraph starting at line 40, do</p> <p>11 you see the first sentence of that paragraph says, in some</p> <p>12 embodiments, a customer end user or a customer purchasing</p> <p>13 employee operating REQI program 44A of the Fisher RIMS system</p> <p>14 40 may also operate TV/2 search program? Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Is that the beginning of the description that you</p> <p>17 referenced that refers to the customer end user being able to</p> <p>18 use the electronic sourcing systems of the claims?</p> <p>19 A That's one of them, yes.</p> <p>20 Q Now, directing your attention to DX-107, the TV/2</p> <p>21 marketing brochure, and going back to that page four that Mr.</p> <p>22 McDonald referenced, from a review of the bullet that Mr.</p> <p>23 McDonald referred you to about integrating parts catalogs with</p> <p>24 dealers's computer systems such as order entry, inventory</p> <p>25 management, and customer records, would it be obvious based on</p>

<p style="text-align: right;">2792</p> <p>Hilliard - Redirect</p> <p style="text-align: center;">2792</p> <p>1 that description in this brochure to combine the RIMS system as</p> <p>2 described in the '989 patent with the TV/2 program as it</p> <p>3 existed prior to 1994 to implement a system having the elements</p> <p>4 of any of the patent claims at issue here?</p> <p>5 A No. For that purpose, it wouldn't be obvious.</p> <p>6 MS. ALBERT: Thank you. No further questions.</p> <p>7 THE COURT: Can he be excused permanently?</p> <p>8 MR. ROBERTSON: Yes, Your Honor.</p> <p>9 MR. McDONALD: Yes, Your Honor.</p> <p>10 THE COURT: All right. Thank you, Mr. Hilliard, for</p> <p>11 being with us and giving us your evidence.</p> <p>12 MR. ROBERTSON: Plaintiff rests, Your Honor.</p> <p>13 THE COURT: Plaintiff rests. Ladies and gentlemen,</p> <p>14 the evidence in this case is now closed. What does that mean</p> <p>15 to us now? I have to do some things with the lawyers tomorrow.</p> <p>16 It probably will take three to four hours to finish that</p> <p>17 process.</p> <p>18 It seems to me that it would maybe be a better --</p> <p>19 because I have found that in this case my estimates have not</p> <p>20 always been as good as I thought they would be. I think it</p> <p>21 might be a better use of your time for you to take off</p> <p>22 tomorrow, come back Monday. They'll be ready to argue the</p> <p>23 case. They'll start off Monday morning, argue the case. I'll</p> <p>24 give you the instructions, and then you can retire to</p> <p>25 deliberate.</p>	<p style="text-align: right;">2794</p> <p style="text-align: center;">2794</p> <p>1 THE COURT: All right, you've made your motion. We</p> <p>2 need -- also, I have to clean up what to do about Court</p> <p>3 Exhibit 4 which was that last question that we got, and I need</p> <p>4 to give a proper instruction on this opinion of counsel</p> <p>5 question as well. I told you what I'm going to do, but I need</p> <p>6 to -- I haven't put it into the jury question -- I mean the</p> <p>7 jury instructions, and then -- I will. Somebody sent back an</p> <p>8 instruction. Who did that?</p> <p>9 MR. ROBERTSON: That was the plaintiff, Your Honor.</p> <p>10 Here's what --</p> <p>11 THE COURT: Do you have an instruction gremlin back</p> <p>12 at the hotel, or is that you?</p> <p>13 MR. ROBERTSON: No, Your Honor, but I might make a</p> <p>14 suggestion. If those slides that I found objectionable that,</p> <p>15 in my view, suggested that Court somehow through the</p> <p>16 construction for the means plus function claims was suggesting</p> <p>17 a combination between TV/2 and RIMS was appropriate, if those</p> <p>18 slides aren't used in the closing arguments, then I think</p> <p>19 putting any undue emphasis, even with a curative instruction,</p> <p>20 would do more harm than that good. So if I can agreement from</p> <p>21 Mr. McDonald that those slides wouldn't be used in closing,</p> <p>22 then I think the problem would be solved.</p> <p>23 MR. McDONALD: I have to know exactly what he is</p> <p>24 talking about.</p> <p>25 MR. ROBERTSON: They were the slides that</p>
<p style="text-align: right;">2793</p> <p style="text-align: center;">2793</p> <p>1 I think that in the overall scheme of things, your</p> <p>2 time will be better served by allowing us to do what we need to</p> <p>3 do tomorrow. So if you will just be here at nine o'clock on</p> <p>4 Monday morning, we'll take -- we'll finish up the case. All</p> <p>5 the evidence is now in. Have a nice weekend. Remember not to</p> <p>6 discuss the matter with anybody. I don't want you -- and don't</p> <p>7 go out and try to build any procurement systems or anything</p> <p>8 like that. Just leave your books. Mr. Neal will take care of</p> <p>9 them. Thank you. Drive carefully.</p> <p>10</p> <p>11 (Jury out.)</p> <p>12</p> <p>13 THE COURT: All right, our task for tomorrow is to</p> <p>14 hear the arguments on JMOL and to -- JMOLs, and to make sure we</p> <p>15 have the jury instructions and the verdict forms correct. I</p> <p>16 estimate that if we get started about 9 o'clock, that we can be</p> <p>17 finished, and I have told the people for the preliminary</p> <p>18 injunction, temporary restraining order to be here, and I'll</p> <p>19 start with them at two o'clock. So I figure by noon we ought</p> <p>20 to be out of here. I certainly hope so.</p> <p>21 MS. HUGHEY: Your Honor, before we close out the day,</p> <p>22 I, just for the record, would like to move for judgment as a</p> <p>23 matter of law on the issue of invalidity now that the plaintiff</p> <p>24 has been fully heard, just to preserve the issue. I understand</p> <p>25 we're going to argue tomorrow. Would that be all right?</p>	<p style="text-align: right;">2795</p> <p style="text-align: center;">2795</p> <p>1 incorporated the Court's construction that were used by Dr.</p> <p>2 Shamos on his obviousness opinions, and I think the suggestion</p> <p>3 was being made, because the Judge was looking in some instances</p> <p>4 at TV/2 as performing a search function among other structures,</p> <p>5 that the implication was left that that would therefore warrant</p> <p>6 the jurors concluding that TV/2 and RIMS would be combined by</p> <p>7 cloaking it in the guise of the Court's construction.</p> <p>8 We thought that was just inappropriate, so I wanted a</p> <p>9 curative instruction. Your Honor actually suggested that I</p> <p>10 prepare one for you. So that was actually the genesis of that.</p> <p>11 THE COURT: I said if you wanted one. I wasn't out</p> <p>12 fishing trolling for a free hit.</p> <p>13 MR. ROBERTSON: I made a proposal that would permit</p> <p>14 that Your Honor would not have to address that if I can get Mr.</p> <p>15 McDonald's agreement.</p> <p>16 THE COURT: Why don't you look at it and look --</p> <p>17 MR. McDONALD: I'll look at it overnight and talk to</p> <p>18 Mr. Robertson first thing in the morning and see if we can work</p> <p>19 that out earlier.</p> <p>20 THE COURT: Okay. Nine o'clock. Now, let me ask you</p> <p>21 something, are you all using demonstratives in your closing</p> <p>22 arguments?</p> <p>23 MR. ROBERTSON: Yes, Your Honor, plaintiff is.</p> <p>24 MR. McDONALD: I'm sorry, what was the question?</p> <p>25 THE COURT: Are you going to use demonstratives in</p>

<p style="text-align: right;">2797</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 21, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p style="text-align: right;">2799</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiffs. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz, and Ms. Rachel 9 Hughey represent the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. We'll take plaintiff's JMOL 13 motion first. 14 MR. ROBERTSON: Good morning, Your Honor. 15 THE COURT: Good morning. 16 MR. ROBERTSON: I'm going to be arguing plaintiff's 17 judgment as a matter of law with respect to infringement, and 18 Ms. Albert will be addressing plaintiff's judgment as a matter 19 of law with respect to the invalidity issues. 20 Your Honor, Rule 50 provides that judgment as a 21 matter of law may be granted when a reasonable jury would not 22 have a legally sufficient evidentiary basis to find for the 23 party Lawson on that issue. ePlus moves for JMOL that Lawson 24 infringes all the asserted claims of the patents-in-suit, both 25 directly and indirectly, both through inducement of</p>
<p style="text-align: right;">2798</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2800</p> <p>1 infringement and contributory infringement. 2 I'm not going to go through all the asserted claims, 3 Your Honor. I know Your Honor is familiar with them, and that 4 would just take up too much time, and I know we're pressed for 5 time here this morning with the Court's schedule this 6 afternoon, but let me hit a high point, first start off by 7 saying, we contend that the defendants non-infringement case in 8 this proceeding has been really based on misdirection, that 9 they have ignored the Court's claim construction with respect 10 to catalog. They rewrote the provision for published by a 11 vendor to suit their manufactured non-infringement positions. 12 It required the Court, I think midcourse through this 13 case, to issue the instruction with respect to published by a 14 vendor to bring some clarity to what the Court intended when it 15 gave its instruction with respect to what a catalog is. 16 It did not mean, as the defendant contended, that the 17 item data associated with the catalog could not be selected -- 18 or had to be selected by the customer or modified or deleted or 19 reformatted or be an entire catalog. That was never intended 20 by the Court, and its revised published-by-a-vendor 21 construction made that clear, and I think the arguments made on 22 that, the non-infringement arguments that were based on that 23 have no sound footing in the record on this case. 24 We believe that the best evidence in this case has 25 come from, indeed, Lawson's own witnesses and documents. Mr.</p>

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<p style="text-align: right;">2841</p> <p>1 Isn't Lawson doing it then?</p> <p>2 MS. HUGHEY: If Lawson is hosting the system, that</p> <p>3 doesn't mean that Lawson is practicing the method step of</p> <p>4 selecting product catalogs to search. That's not what Lawson</p> <p>5 is doing. Method steps -- for direct infringement of a method</p> <p>6 claim, it means that a party must perform every single step of</p> <p>7 the method.</p> <p>8 In this case, there's not even an allegation that</p> <p>9 Lawson performs the steps of selecting the product catalogs to</p> <p>10 search. There's not even an allegation that Lawson performs</p> <p>11 the step of searching for matching items among the selected</p> <p>12 product catalogs.</p> <p>13 That allegation was made of Lawson's customers.</p> <p>14 There's no evidence on the record that Lawson does those</p> <p>15 things, nor was an allegation made that that would be an</p> <p>16 infringement.</p> <p>17 THE COURT: All right. Thank you.</p> <p>18 MS. HUGHEY: Yes, Your Honor, just one final point</p> <p>19 that was raised in our brief, but I'd like to raise it here at</p> <p>20 oral argument. ePlus's expert, Dr. Weaver, was extremely</p> <p>21 conclusory with respect to the infringement allegations made at</p> <p>22 trial.</p> <p>23 THE COURT: You say his testimony was conclusory?</p> <p>24 MS. HUGHEY: Yes, Your Honor.</p> <p>25 THE COURT: Can you put that one back in the barn?</p>	<p style="text-align: right;">2843</p> <p>1 claim elements were met is a disputed issue in this case. Dr.</p> <p>2 Shamos specifically said with respect to the means for</p> <p>3 selecting product catalogs to search, there is not even</p> <p>4 remotely any structure in the Lawson accused systems that</p> <p>5 correspond to this element.</p> <p>6 So what I'm telling you is that specifically with</p> <p>7 respect to the means plus function claims, when the only</p> <p>8 statement of infringement was, yes, that's met, that is</p> <p>9 insufficient as a matter of law for this to be sent to the</p> <p>10 jury. ePlus does not have a basis to find for infringement on</p> <p>11 these claims.</p> <p>12 THE COURT: All right.</p> <p>13 MS. HUGHEY: The same issue permeates the system</p> <p>14 claims, but I wanted to point out the method claims because the</p> <p>15 Federal Circuit has been so clear that you cannot just make a</p> <p>16 conclusory statement, you must point out the structure.</p> <p>17 THE COURT: All right. Thank you. She just served</p> <p>18 you up an air ball. Take a swing at it and tell me why she is</p> <p>19 not right on Dr. Weaver's testimony on means plus function.</p> <p>20 MR. ROBERTSON: Well, Dr. Weaver said he faithfully</p> <p>21 applied the Court's construction, and the Court's construction</p> <p>22 identified what the structures were that performed the</p> <p>23 function. Dr. Weaver introduced --</p> <p>24 THE COURT: Yes, but did he say what the structures</p> <p>25 were on the Lawson side? The point she's making, you have to</p>
<p style="text-align: right;">2842</p> <p>1 Anybody who testified as long as he did, it's hard to say it</p> <p>2 was conclusory. I think the Federal Circuit would laugh me out</p> <p>3 of the courthouse if I did that.</p> <p>4 MS. HUGHEY: No, Your Honor, actually what the</p> <p>5 Federal Circuit has said -- specifically the means plus</p> <p>6 function limitations, the Federal Circuit itself has said, to</p> <p>7 establish infringement of a means plus function claim, quote,</p> <p>8 it is insufficient for the patent-holder to present testimony</p> <p>9 based only on a functional, not structural analysis.</p> <p>10 Based on this requirement, the Court has repeatedly</p> <p>11 either granted summary judgment, granted judgment as a matter</p> <p>12 of law, or reversed District Courts that allowed the</p> <p>13 infringement verdict to stand when the expert merely made</p> <p>14 conclusory statements that the function was performed or that</p> <p>15 the structure element was met without any statement of where</p> <p>16 the structure was in the accused products, and I'll give you</p> <p>17 two examples.</p> <p>18 For the means for selecting a products catalog to</p> <p>19 search, claim three of the '683 patent, Dr. Weaver opined as</p> <p>20 follows, quote: This is Mr. Robertson. In each of these</p> <p>21 scenarios, all five systems, do they provide the means for</p> <p>22 selecting a product catalog to search? Answer: Yes.</p> <p>23 That is the extent of Dr. Weaver's testimony on that</p> <p>24 element. Now, there is not just a mere, well, it's not really</p> <p>25 in dispute, so let's just get it out there. Whether these</p>	<p style="text-align: right;">2844</p> <p>1 say what the structures were in the --</p> <p>2 MR. ROBERTSON: He did when he went through all the</p> <p>3 modules and he talked about the guides that talked about the</p> <p>4 purchase order module, the requisition module, the search</p> <p>5 program, the order list, the user interface. All those were</p> <p>6 the structures that the Court defined as performing the various</p> <p>7 functions. So he went through that first in great detail as to</p> <p>8 what all those modules were and --</p> <p>9 THE COURT: That's all I need. I think that's</p> <p>10 correct. He didn't in response to that particular question,</p> <p>11 but the hour or so that preceded that conclusion question dealt</p> <p>12 with that, I believe, so I don't need to hear any more.</p> <p>13 What about this capability thing? These cases she's</p> <p>14 talking about seems to say -- the copy from Lexus is fouled up.</p> <p>15 It doesn't have in it -- it's got -- I don't know how it did</p> <p>16 it, but it begins at one part, what is set out below in another</p> <p>17 column, and it's almost as if -- one time I had a defendant on</p> <p>18 the stand when I was a prosecutor, and I showed him a copy of</p> <p>19 his confession, and his excuse for why the confession wasn't</p> <p>20 right was that the computer -- that the copier had changed the</p> <p>21 text of his confession, and I didn't find that very persuasive.</p> <p>22 Now, for the first time, I find that a computer may</p> <p>23 be capable of doing that, so I'm going to get a new copy of the</p> <p>24 case and see if I can get it right, read the right part of it.</p> <p>25 And I'm not saying anybody did anything funny. I'm saying that</p>

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<p style="text-align: right;">2849</p> <p>1 THE COURT: Is that what the case holds? That's what</p> <p>2 this case holds -- that's what this case about the travel</p> <p>3 candle holds, that, in fact, there was no evidence that the</p> <p>4 travel candle was used in the infringing way.</p> <p>5 MR. ROBERTSON: There's ample evidence in this case</p> <p>6 that it's used in the infringing way, both from Mr.</p> <p>7 Christopherson and --</p> <p>8 THE COURT: Here's the bottom line. I'm the finder</p> <p>9 of the fact. I would clearly find that there is infringement</p> <p>10 of everything that Dr. Weaver said, that each system infringed</p> <p>11 each claim for the reasons he stated. There isn't any question</p> <p>12 that I would do that.</p> <p>13 But I'm not the finder of the fact. So under these</p> <p>14 facts, under the evidence in this case, don't I have to let the</p> <p>15 jury decide that case and then come back at the end of the day</p> <p>16 and see whether that's right? So what I'm inclined to do is</p> <p>17 reserve judgment on this motion, because I will tell you -- I</p> <p>18 personally am having real trouble deciding why there's any</p> <p>19 defense to infringement at all.</p> <p>20 MR. ROBERTSON: I understand.</p> <p>21 THE COURT: But I believe that I do have to let the</p> <p>22 case go to the jury subject to my ability to control that, and</p> <p>23 I'm going to take this motion under advisement, deny the motion</p> <p>24 of no infringement by Lawson, keep your motion under</p> <p>25 advisement.</p>	<p style="text-align: right;">2851</p> <p>1 THE COURT: All right.</p> <p>2 MS. HUGHEY: Hello, Your Honor. May it</p> <p>3 please the Court. Lawson moves for judgment as a</p> <p>4 matter of law on the issue of invalidity because a</p> <p>5 reasonable jury does not have a reasonable evidentiary</p> <p>6 basis to find for ePlus on the issue.</p> <p>7 At trial documents demonstrated and witnesses</p> <p>8 testified --</p> <p>9 THE COURT: Now, there are three grounds of</p> <p>10 invalidity. One is anticipation.</p> <p>11 MS. HUGHEY: Correct.</p> <p>12 THE COURT: One is obviousness.</p> <p>13 MS. HUGHEY: Correct.</p> <p>14 THE COURT: And the other is written</p> <p>15 description.</p> <p>16 MS. HUGHEY: No, Your Honor, Lawson is not</p> <p>17 asserting written description.</p> <p>18 THE COURT: That was there at one time.</p> <p>19 MS. HUGHEY: Correct.</p> <p>20 THE COURT: That's no longer there. So I</p> <p>21 don't need to deal with that one.</p> <p>22 MS. HUGHEY: Correct.</p> <p>23 THE COURT: So you have anticipation and</p> <p>24 obviousness.</p> <p>25 MS. HUGHEY: Correct, Your Honor. At trial</p>
<p style="text-align: right;">2850</p> <p>1 MR. ROBERTSON: I understand, Your Honor. Thank you.</p> <p>2 THE COURT: All right, now, invalidity. I believe</p> <p>3 that -- Ms. Hughey, are you doing that one, too?</p> <p>4 MS. HUGHEY: I am, Your Honor, and I promise to be</p> <p>5 much slower this time.</p> <p>6 THE COURT: Because if you don't, you're going to get</p> <p>7 knee-capped but not buy me.</p> <p>8 Let's see. Is this a good place for the court</p> <p>9 reporters to switch and for us to take a little recess?</p> <p>10</p> <p>11 (Recess taken.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">2852</p> <p>1 the documents demonstrated and the witnesses testified</p> <p>2 regarding the features and functionality of the prior</p> <p>3 art RIMS system disclosed in the '989 patent.</p> <p>4 THE COURT: Let's take the anticipation.</p> <p>5 What is it that anticipates?</p> <p>6 MS. HUGHEY: The RIMS system alone</p> <p>7 anticipates every single claim of the patents-in-suit.</p> <p>8 THE COURT: All right.</p> <p>9 MS. HUGHEY: In combination, the RIMS system</p> <p>10 and the TV/2 product render every single one of the</p> <p>11 claims of the patents-in-suit obvious.</p> <p>12 Dr. Shamos went through every single claim</p> <p>13 and explained both the anticipation and obviousness</p> <p>14 analysis. The evidence at trial further demonstrated</p> <p>15 that both systems are prior art.</p> <p>16 The combination of RIMS plus TV/2 renders</p> <p>17 every single asserted claim of the patents-in-suit</p> <p>18 obvious. The preferred embodiment disclosed in the</p> <p>19 patents is the combination of RIMS plus TV/2 and the</p> <p>20 Court's construction is consistent with that.</p> <p>21 The TV/2 literature specifically says to</p> <p>22 combine TV/2 with the parts ordering system and</p> <p>23 inventory management system. The RIMS system</p> <p>24 disclosed in the '989 patent was a part ordering and</p> <p>25 inventory management system.</p>

<p style="text-align: right;">2853</p> <p>1 The patents-in-suit do no more than combine</p> <p>2 the RIMS system with TV/2. This is an obvious</p> <p>3 combination that renders the claims invalid.</p> <p>4 In addition, there are no secondary</p> <p>5 considerations of non-obviousness.</p> <p>6 THE COURT: There aren't any?</p> <p>7 MS. HUGHEY: There are not any.</p> <p>8 THE COURT: I thought we had evidence on it.</p> <p>9 MS. HUGHEY: I think that ePlus attempted to</p> <p>10 provide some evidence about commercial success of its</p> <p>11 commercial products, but there's no evidence that the</p> <p>12 commercial products are claimed by the</p> <p>13 patents-in-suit.</p> <p>14 THE COURT: Well, Mr. Farber testified that</p> <p>15 they were yesterday afternoon, didn't he?</p> <p>16 MS. HUGHEY: Mr. Farber is not a technical</p> <p>17 expert. He said it was his opinion they were covered</p> <p>18 by the patents-in-suit, but no evidence has come in</p> <p>19 regarding the features and functionality of ePlus'</p> <p>20 commercial products.</p> <p>21 THE COURT: In your evidence, didn't you</p> <p>22 introduce evidence that or didn't -- I don't know who.</p> <p>23 Let me back away from that.</p> <p>24 MS. HUGHEY: Yes, Your Honor.</p> <p>25 THE COURT: There's some brochures about</p>	<p style="text-align: right;">2855</p> <p>1 There's nothing in the record. The fact is for</p> <p>2 commercial success to be relevant, it has to be</p> <p>3 relevant to the patented features. And because</p> <p>4 there's no evidence in the record, we have no idea.</p> <p>5 Even if Procure+ and Content+ were covered by the</p> <p>6 patents-in-suit, and let me be clear, there's no</p> <p>7 evidence on that point, even if that were the case,</p> <p>8 there's no evidence that any commercial success was</p> <p>9 related to the patented features.</p> <p>10 Moreover, there's actually no evidence of</p> <p>11 commercial success in this case at all. So even if</p> <p>12 ePlus' products are covered by the patents.</p> <p>13 THE COURT: What do you mean by that?</p> <p>14 MS. HUGHEY: The only evidence that came in</p> <p>15 was --</p> <p>16 THE COURT: When you make statements like</p> <p>17 that, you kind of leave me floating around. So it's</p> <p>18 okay for you to say that, and then say, Let me explain</p> <p>19 why I say that. Because those are fairly conclusory</p> <p>20 statements on which to base some kind of motion.</p> <p>21 MS. HUGHEY: Absolutely, Your Honor.</p> <p>22 THE COURT: Or judgment as a matter of law.</p> <p>23 MS. HUGHEY: Absolutely. The evidence that</p> <p>24 came in at trial with respect to Content+ and</p> <p>25 Procure+, let's call them the ePlus products, was that</p>
<p style="text-align: right;">2854</p> <p>1 these e -- is it eContent and --</p> <p>2 MR. ROBERTSON: Content+ and Procure+.</p> <p>3 THE COURT: They put the patent down there on</p> <p>4 the bottom of the thing.</p> <p>5 MS. HUGHEY: The fact that ePlus marks its</p> <p>6 product with a patent does not mean that the product</p> <p>7 is actually covered by the patents-in-suit.</p> <p>8 THE COURT: I know that, but isn't that</p> <p>9 evidence that it is?</p> <p>10 MS. HUGHEY: No, Your Honor, because even if</p> <p>11 ePlus' products --</p> <p>12 THE COURT: Just so I understand, you have to</p> <p>13 have a technical expert come in and say the</p> <p>14 products -- what are they again? Content+ --</p> <p>15 MS. HUGHEY: Content+ and Procure+.</p> <p>16 THE COURT: Procure+ practiced the patent.</p> <p>17 Don't you have to have an expert come in and say that?</p> <p>18 MS. HUGHEY: I'm not sure that you need to</p> <p>19 have an expert, Your Honor, but you have to have some</p> <p>20 disclosure of the functionality because commercial</p> <p>21 success requires --</p> <p>22 THE COURT: How do you prove disclosure of</p> <p>23 the functionality? What do you mean by that?</p> <p>24 MS. HUGHEY: They would have to have some</p> <p>25 disclosure about what their product actually is.</p>	<p style="text-align: right;">2856</p> <p>1 those divisions were not commercially successful.</p> <p>2 Those products never made money.</p> <p>3 I believe that on the stand Dr. Farber may</p> <p>4 have said, We won some awards. We had some praise.</p> <p>5 But no documents came in suggesting that that was</p> <p>6 related to any of the features or functionality</p> <p>7 related to the commercial products, let alone that</p> <p>8 that was tied back to the claimed features and</p> <p>9 functionality of the patents-in-suit.</p> <p>10 And more importantly, Your Honor, evidence of</p> <p>11 commercial success, the secondary considerations,</p> <p>12 would only be relevant if there were for some reason</p> <p>13 no motivation to combine the prior art references. In</p> <p>14 this case what we have is an explicit motivation to</p> <p>15 combine the TV/2 system and the RIMS system. For that</p> <p>16 reason, these secondary considerations of</p> <p>17 non-obviousness don't apply.</p> <p>18 THE COURT: Well, you were at one point</p> <p>19 making the argument in your papers, I think it was at</p> <p>20 summary judgment, that you can't count the income that</p> <p>21 came to ePlus from the settlements as evidence of</p> <p>22 commercial success. Are you still taking that</p> <p>23 position?</p> <p>24 MS. HUGHEY: That's absolutely correct.</p> <p>25 THE COURT: Aren't those things paid up</p>

<p style="text-align: right;">2925</p> <p>1 THE COURT: Was it Kinross and Momyer?</p> <p>2 MS. STOLL-DeBELL: No, I think it was Momyer</p> <p>3 and Johnson that were on the '989. Then you had Mr.</p> <p>4 Kinross added to the patents-in-suit, and someone else</p> <p>5 whose name escapes me.</p> <p>6 THE COURT: Melly.</p> <p>7 MS. STOLL-DeBELL: So for 102(e) to not apply</p> <p>8 this case, they would have to show that it was only</p> <p>9 Momyer and Johnson that invented all of the asserted</p> <p>10 claims in this case, and I think to the extent there</p> <p>11 is any testimony on this at all, Mr. Kinross was</p> <p>12 involved.</p> <p>13 And the addition of Mr. Kinross makes it a</p> <p>14 different inventive entity for 102(e), and so</p> <p>15 therefore we can use that in this case.</p> <p>16 THE COURT: All right. Okay.</p> <p>17 MS. STOLL-DeBELL: Thank you.</p> <p>18 THE COURT: I understand your argument.</p> <p>19 MS. STOLL-DeBELL: Thank you.</p> <p>20 MS. HUGHEY: Very briefly, Your Honor, just</p> <p>21 to address some of the issues that Ms. Albert raised</p> <p>22 with respect to the judgment as a matter of law issue.</p> <p>23 She's seeking judgment as a matter of law of</p> <p>24 no written description, enablement, claims that aren't</p> <p>25 in the case anymore. And the Court has -- I think you</p>	<p style="text-align: right;">2927</p> <p>1 order, it was all systems accused of infringing, all</p> <p>2 claims.</p> <p>3 When Dr. Weaver was on the stand, he was very</p> <p>4 specific; 2, 3 and 5. And so at the end, I said,</p> <p>5 Well, for those, 1 and 4, that aren't accused of</p> <p>6 infringing anymore even though they were through the</p> <p>7 beginning of trial, and they must have been abandoned,</p> <p>8 I'd like judgment as a matter of law.</p> <p>9 MR. ROBERTSON: Mr. Momyer define the</p> <p>10 systems. In fact, those are the only five systems</p> <p>11 that are at issue here.</p> <p>12 THE COURT: But that's not the argument that</p> <p>13 she's making. Let her finish.</p> <p>14 MR. ROBERTSON: I'm sorry.</p> <p>15 MS. HUGHEY: The point is, Your Honor said</p> <p>16 that, well, if they didn't assert infringement on all</p> <p>17 those systems, there's no need to grant judgment as a</p> <p>18 matter of law, which makes sense to me because they</p> <p>19 didn't prove that they weren't --</p> <p>20 THE COURT: But you're saying they came into</p> <p>21 the case just like you did.</p> <p>22 MS. HUGHEY: Correct.</p> <p>23 THE COURT: They were asserting a theory of</p> <p>24 infringement. I should have granted judgments as a</p> <p>25 matter of law on those infringements.</p>
<p style="text-align: right;">2926</p> <p>1 recognized when I wanted to move for judgment as a</p> <p>2 matter of law on unasserted claims that might not</p> <p>3 cover certain products, you said, If it's not in</p> <p>4 dispute, if they aren't contending it, there's no</p> <p>5 judgment as a matter of law.</p> <p>6 That's the same exact thing here. There are</p> <p>7 lots of defenses that Lawson could have raised but did</p> <p>8 not.</p> <p>9 THE COURT: The difference, I think here,</p> <p>10 is -- I'm trying to recall that point. The difference</p> <p>11 is that here you actually went into the trial pursuant</p> <p>12 to the final pretrial order on these issues, and they</p> <p>13 were issues as to which you had the burden of proof,</p> <p>14 and you had to offer evidence on, and if you didn't,</p> <p>15 you lose as a matter of law because you didn't offer</p> <p>16 any proof on them, not because they were abandoned</p> <p>17 before the case went to the jury.</p> <p>18 I have to tell you, I don't remember what</p> <p>19 you're talking about. Can you help me a little bit</p> <p>20 more?</p> <p>21 MS. HUGHEY: Yes, Your Honor. So ePlus has</p> <p>22 accused the (unintelligible).</p> <p>23 THE COURT: What?</p> <p>24 MS. HUGHEY: The products. The EDI. The</p> <p>25 five accused systems of infringing. And the pretrial</p>	<p style="text-align: right;">2928</p> <p>1 MS. HUGHEY: I actually agreed with Your</p> <p>2 Honor at that time that it didn't make sense.</p> <p>3 THE COURT: I know that if you were wrong and</p> <p>4 I was wrong, we ought to straighten it out.</p> <p>5 MS. HUGHEY: Yes, that's right. I suppose</p> <p>6 the point is, Your Honor, I don't believe that ePlus</p> <p>7 is entitled to judgment as a matter of law on written</p> <p>8 description or enablement because those aren't defense</p> <p>9 that we even raised at trial; however, if it's Your</p> <p>10 Honor's position that a defense that was at some point</p> <p>11 in the case and not dropped before trial can then have</p> <p>12 a judgment as a matter of law granted against it, then</p> <p>13 the same should apply to Lawson and we're entitled to</p> <p>14 judgment as a matter of law on all those other claims.</p> <p>15 THE COURT: I think you're right about that.</p> <p>16 MS. HUGHEY: Okay. To make that record</p> <p>17 clear.</p> <p>18 The second point, Ms. Albert raised the 112,</p> <p>19 paragraph 6, and paragraph 2 on 101, issues of law.</p> <p>20 The enablement issue of law and statutory subject</p> <p>21 matter issue of law.</p> <p>22 I agree with Ms. Albert. That's an issue for</p> <p>23 the Court to decide. Lawson moved for summary</p> <p>24 judgment on those pure issues of law.</p> <p>25 THE COURT: And I denied it.</p>

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<p style="text-align: right;">2929</p> <p>1 MS. HUGHEY: That summary judgment was</p> <p>2 denied. It's my understanding that that issue is now</p> <p>3 preserved for appeal and that Your Honor doesn't have</p> <p>4 to rerule on it, but just to make the record clear,</p> <p>5 Lawson again moves for judgment as a matter of law on</p> <p>6 the 112, paragraph 6, and 101 claims.</p> <p>7 THE COURT: How can you do that?</p> <p>8 MS. HUGHEY: Your Honor --</p> <p>9 THE COURT: You didn't try them.</p> <p>10 MS. HUGHEY: We did not try them.</p> <p>11 THE COURT: You relied for better or for</p> <p>12 worse on the summary judgment decision.</p> <p>13 MS. HUGHEY: Correct.</p> <p>14 THE COURT: And your appeal point is that the</p> <p>15 Court erred in failing to grant summary judgment.</p> <p>16 MS. HUGHEY: Correct, Your Honor.</p> <p>17 THE COURT: That's where the matter stays.</p> <p>18 There's no judgment to be obtained on that at this</p> <p>19 juncture, I don't think.</p> <p>20 Now that was with respect to what issue?</p> <p>21 MS. HUGHEY: 112, paragraph 2 and 6,</p> <p>22 enablement issue, and the 101 statutory subject matter</p> <p>23 issue.</p> <p>24 THE COURT: You mean the patentability issue?</p> <p>25 MS. HUGHEY: Correct, Your Honor.</p>	<p style="text-align: right;">2931</p> <p>1 THE COURT: All right. And those have</p> <p>2 already been decided in the motion for summary</p> <p>3 judgment, right?</p> <p>4 MS. HUGHEY: Correct.</p> <p>5 THE COURT: So I don't need to address those.</p> <p>6 MS. HUGHEY: That's any understanding.</p> <p>7 THE COURT: And then the 101 is the issue of</p> <p>8 patentability, which is the subject matter or, i.e.,</p> <p>9 the Bilski issue, and I erred as a matter of law in</p> <p>10 failing to grant the summary judgment on that, right?</p> <p>11 MS. HUGHEY: Correct.</p> <p>12 THE COURT: And that's where it lies because</p> <p>13 it never came into trial one way or the other?</p> <p>14 MS. HUGHEY: Correct.</p> <p>15 THE COURT: I don't need to deal with that</p> <p>16 either.</p> <p>17 MS. HUGHEY: Okay. And I think the issues</p> <p>18 have been fully raised, but just for the record I</p> <p>19 disagree with Ms. Albert. Dr. Shamos explained every</p> <p>20 element.</p> <p>21 THE COURT: You disagree with Ms. Albert on</p> <p>22 general principles on everything she said.</p> <p>23 MS. HUGHEY: Correct, Your Honor.</p> <p>24 If you have any questions, I'm happy to</p> <p>25 answer them.</p>
<p style="text-align: right;">2930</p> <p>1 THE COURT: 112, six and what?</p> <p>2 MS. HUGHEY: Paragraph 2 and paragraph 6.</p> <p>3 THE COURT: And 2 is indefiniteness, right?</p> <p>4 MS. HUGHEY: That is indefiniteness, Your</p> <p>5 Honor.</p> <p>6 THE COURT: And 6 is enablement, right?</p> <p>7 MS. HUGHEY: I'm sorry, Your Honor. The 112,</p> <p>8 paragraph 2, is --</p> <p>9 THE COURT: You-all quit using patent terms.</p> <p>10 I don't have the statutes up here, and I don't have</p> <p>11 them committed to memory like you-all do. And I have</p> <p>12 so much else going on up here, that I need to know</p> <p>13 what you're talking about. I use the short form</p> <p>14 references to trigger my memory.</p> <p>15 MS. HUGHEY: I'm sorry, Your Honor. I'm just</p> <p>16 trying to make sure I'm very clear. 112, paragraph 2</p> <p>17 and paragraph 6.</p> <p>18 THE COURT: Let's take 112, paragraph 2.</p> <p>19 What are you talking about? What is that one?</p> <p>20 MS. HUGHEY: Indefiniteness. I'm sorry, Your</p> <p>21 Honor. I was having a moment. 112, paragraph 2 is</p> <p>22 indefiniteness.</p> <p>23 THE COURT: And six is what?</p> <p>24 MS. HUGHEY: Also indefiniteness. They go</p> <p>25 together.</p>	<p style="text-align: right;">2932</p> <p>1 THE COURT: Thank you. I don't.</p> <p>2 All right. I've got an injunction, and it's</p> <p>3 a sealed hearing, so you can't come in, at 2 o'clock.</p> <p>4 It shouldn't take half an hour. And I'll see you-all</p> <p>5 at about 2:30 for instructions.</p> <p>6 MR. ROBERTSON: Your Honor, could I just --</p> <p>7 THE COURT: The court reporter may kill you</p> <p>8 or me, I'm not sure. I'm going to send her to you</p> <p>9 first.</p> <p>10 MR. ROBERTSON: Just one thing to tell the</p> <p>11 Court. EPlus withdraws its claim for willful</p> <p>12 infringement.</p> <p>13 THE COURT: Then it's taken care of. Thank</p> <p>14 you. We'll be in recess.</p> <p>15 (Luncheon recess taken.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>3078</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 24, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 David M. Young, Esquire 19 Goodwin Procter, LLP 20 901 New York Avenue NW 21 Suite 900 22 Washington, D.C. 20001 23 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>3080</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. I was very sorry to hear 13 about Ms. Albert's father passing away. You all both wrote 14 letters about it. I don't see the point in bringing that to 15 the attention the jury. Do either one of you? 16 In the old days, when people didn't do what they were 17 supposed to do, they got keelhauled. I'm about ready to 18 institute that procedure here. It's time for the jury to get 19 going, and I've had to read all this stuff now. I told you 20 what to do about this verdict form, and it was pretty easy, and 21 it's unnecessary to go through all this stuff. 22 Now, apparently we're going to have to revise it 23 anyway because -- and some of the instructions. What 24 instructions have to be revised because Lawson is not 25 contending that the RIMS brochure is prior art? Which one is</p>
<p>3079</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>3081</p> <p>1 arguing? 2 MR. YOUNG: Your Honor, David Young for ePlus. It's 3 instruction 3-A that was submitted to the Court over the 4 weekend. It lists as I think reference number three, RIMS 5 brochure, and that would have to come out now because it 6 appears that Lawson does not have that as an anticipated 7 reference on its own verdict form. 8 THE COURT: Is that right? 9 MR. McDONALD: Yes, that's right, Your Honor. 10 THE COURT: So I suppose I need to tell the jury 11 simply to disregard any testimony about the RIMS brochure as 12 prior art. 13 MR. McDONALD: No, it not anticipatory prior art 14 meaning it's not all by itself anticipating a claim. We're 15 still using it for obviousness and support for the on sale, the 16 RIMS as prior art and 102(a) and (b), but the brochure, all by 17 itself, we're not contending is an anticipating reference, but 18 it would be used to support number one in the instruction which 19 is the Fisher RIMS system as prior art. 20 THE COURT: What do you mean, to be used to support? 21 If you're going to use it -- 22 MR. McDONALD: It's evidence of the Fisher RIMS 23 system as it was being sold and -- 24 THE COURT: Well, if it's evidence of it, it comes 25 out of 39, too, because you're not contending that it is</p>

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<p style="text-align: right;">3122</p> <p>1 got back information that it was temporarily out of stock,</p> <p>2 please check back soon. Clearly, using the Lawson system,</p> <p>3 using that punchout capability, there was the capability of</p> <p>4 determining whether a selected matching item was available in</p> <p>5 inventory.</p> <p>6 That functionality is also available with the systems</p> <p>7 that use the EDI or electronic data interchange capability.</p> <p>8 Dr. Weaver showed you, if we're using the electronic data</p> <p>9 interchange module, the purchase order goes to a vendor, and</p> <p>10 the vendor can reply and the purchase order responds as to</p> <p>11 whether that item is available in inventory, for example,</p> <p>12 whether or not the item was backordered. During his</p> <p>13 demonstration, he showed you a situation in which that</p> <p>14 happened, and you'll be able to look at that when you're in</p> <p>15 your deliberations.</p> <p>16 Let's talk a little bit about this punchout</p> <p>17 capability. As you know, there's a punchout application that</p> <p>18 Lawson includes that is accused of infringement in one of the</p> <p>19 five configurations. Dr. Weaver's demonstration of the</p> <p>20 punchout capability showed how a punchout user can determine</p> <p>21 whether an item is available in inventory, and it showed how</p> <p>22 Lawson creates, communicates, and controls the punchout trading</p> <p>23 partner websites that an S3 user punches out to.</p> <p>24 You don't punch out to Dell.com, for example, when</p> <p>25 you are doing that. You punch out to a specially created Dell</p>	<p style="text-align: right;">3124</p> <p>1 punchout architecture to show you Lawson keeps a bear hug</p> <p>2 around this entire process, if we can go to the punchout</p> <p>3 architecture slide.</p> <p>4 This was one of the Lawson documents. It's the</p> <p>5 procurement punchout guide, I believe, Plaintiff's Exhibit</p> <p>6 Number 211. Dr. Weaver testified as to the eight steps that</p> <p>7 are necessary in order to do the punchout process. These eight</p> <p>8 steps are set up by Lawson in order to provide this</p> <p>9 functionality through a user of the punchout system.</p> <p>10 I'm not going to go through all eight, but that</p> <p>11 exhibit is back in evidence, and it demonstrates clearly that</p> <p>12 Lawson is the one that has created, designed, and instituted</p> <p>13 this entire process to provide that architecture to the user of</p> <p>14 the system in order to perform the search, the selection, and</p> <p>15 retrieval of the information necessary to then fill out a</p> <p>16 requisition and build the purchase orders.</p> <p>17 Indeed, I thought it was very interesting. The term</p> <p>18 that Mr. Lohkamp used is that they have to create the handshake</p> <p>19 with their punchout trading partners in order to do that. Each</p> <p>20 of these steps is controlled by Lawson, and Lawson controls the</p> <p>21 authorization process, and Lawson establishes the connection,</p> <p>22 and Lawson retrieves the information in order to complete the</p> <p>23 entire purchase process.</p> <p>24 It was Mr. Lohkamp who also confirmed that Lawson</p> <p>25 provides the assistance to its customers including manuals,</p>
<p style="text-align: right;">3123</p> <p>1 punchout website that Lawson has worked with Dell in order to</p> <p>2 set up the communication protocols in order to do that.</p> <p>3 For example, we can look at the next slide. Here</p> <p>4 you'll see, and the testimony was that Lawson, when you use</p> <p>5 this punchout capability, you are always within the Lawson</p> <p>6 system and that this is not, notwithstanding we are looking at</p> <p>7 products that are available from the Dell catalog, this is a</p> <p>8 special Dell website for this, and Dr. Weaver pointed out that</p> <p>9 you can tell that from what's called the URL address.</p> <p>10 You are at the Lawson server.corpnet.lawson.com when</p> <p>11 you are there looking at these Dell products. Lawson</p> <p>12 established that, Lawson created that, Lawson designed it, and</p> <p>13 Lawson set up all of the necessary architectures and</p> <p>14 communication protocols in order to do that.</p> <p>15 You even heard from Mr. Lohkamp, the product</p> <p>16 strategist, about how Lawson enters into agreements with its</p> <p>17 punchout trading partners to develop that connection. He also</p> <p>18 explained how the punchout partners pay Lawson to configure and</p> <p>19 test and set up the connection. He said those contracts were</p> <p>20 mutually beneficial.</p> <p>21 Now, he also said he had a number of relationships</p> <p>22 with punchout trading partners that were not contractual, but</p> <p>23 when I asked him, were they mutually beneficial as well to both</p> <p>24 Lawson and to the trading partners, he said, yes.</p> <p>25 If I can just talk to you a little bit about the</p>	<p style="text-align: right;">3125</p> <p>1 training services, and implementation services all to help them</p> <p>2 configure the procurement punchout with its partners. Indeed,</p> <p>3 the user of the Lawson system tells Lawson what punchout</p> <p>4 trading partners they want available to their system, and then</p> <p>5 Lawson will indeed to do that, and then they charge for that</p> <p>6 service.</p> <p>7 May I have the next slide, 43. Indeed, I asked</p> <p>8 Mr. Christopherson, when the Lawson system punches out to the</p> <p>9 punchout creating the partner's catalog, you remain connected</p> <p>10 to the Lawson system; correct? Correct.</p> <p>11 I'd like to talk to you a little bit now about what's</p> <p>12 call indirect infringement, some of these issues about inducing</p> <p>13 and contributory infringement. Indirect infringement, like</p> <p>14 direct infringement, is still infringement, and ePlus, we</p> <p>15 believe, has shown through the testimony, again, of Lawson's</p> <p>16 own witnesses and its own documents that Lawson infringes the</p> <p>17 claims of the patent both directly and indirectly.</p> <p>18 The Court will instruct you that Lawson may directly</p> <p>19 infringe the patents even if they believe in good faith what</p> <p>20 they are doing is not infringement of any of the patents. The</p> <p>21 Court will also explain to you the law concerning indirect</p> <p>22 infringement. In a nutshell, ePlus asserts that Lawson has</p> <p>23 both induced and contributed to the infringement of ePlus's</p> <p>24 patents.</p> <p>25 So what does that mean? Well, to show induced</p>